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HEARING  
SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



STATE CAPITOL  
ROOM 113  
SACRAMENTO, CALIFORNIA

MONDAY, JANUARY 21, 1998  
1:52 P.M.



1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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7 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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16 WEDNESDAY, JANUARY 21, 1998

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25 Reported by

26  
27 Evelyn J. Mizak  
28 Shorthand Reporter





APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

STAN NEAL, Consultant to SENATOR BRULTE

ALSO PRESENT

JACK C. PARNELL, Member  
State Air Resources Board

ANTHONY M. VITTI, Member  
Trustees of the California State University

KAREN YELVERTON  
California State Universities

BOB GURIAN, Legislative Director  
California Faculty Association



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THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY

REPORT OF THE  
COMMISSIONER OF THE GENERAL LAND OFFICE

FOR THE YEAR 1880

CHICAGO: PUBLISHED BY THE UNIVERSITY OF CHICAGO PRESS, 1881.

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Do we have Mr. Parnell? It's nice to see you again. I haven't seen you since Fullerton. Good afternoon, sir.

MR. PARNELL: Good afternoon.

CHAIRMAN LOCKYER: Well, we want to hear from you. Have you got a prepared statement?

MR. PARNELL: It's not necessary.

CHAIRMAN LOCKYER: What do you want to do?

MR. PARNELL: I appreciate.

CHAIRMAN LOCKYER: Tell us about being a chemical engineer on the Air Board.

MR. PARNELL: On the Air Board. I'm appreciative of your time. It's unusual for someone to come before you for confirmation who served for four years on the Air Board. In fact, when I called Nancy Michel to see what, if anything, I should be doing, she said, "You again?"

CHAIRMAN LOCKYER: You've been appointed to a number of things in your life.

MR. PARNELL: It appears as though I can't keep a job, Senator.

But it is a pleasure, and I'd be happy, in the interest of time, to take any questions that you might have.

My agenda while serving those four years on the Air Board has simply been to achieve clean air in a common sense, in a flexible, in a cost effective manner.

CHAIRMAN LOCKYER: Let me just inquire of

1 Members, are there any specific questions that you'd wish to ask  
2 about?

3 I guess it might be appropriate to hear you for a  
4 moment, Mr. Parnell, on the general recent air quality fights  
5 that relate to gasoline additives?

6 We seem to have heard that those that worry about  
7 water quality and those that worry about air quality maybe  
8 didn't talk to each other, and there was good air work-up, but  
9 not good water work-up, or something. What do you see from your  
10 perspective?

11 MR. PARNELL: From my perspective, I think  
12 there's been a lot of misunderstanding. While it is true that  
13 they are finding traces of MTBE, which is the oxygen additive  
14 that petroleum processors have chosen to use, there's no mandate  
15 in California law for them to use MTBE, or oxygenates, for that  
16 matter, although this is the additive of choice. And they've  
17 spooled up their plants at the cost of \$4-5 billion, we're told,  
18 in order to make MTBE available in the production of  
19 reformulated gasolines.

20 While there is no mandate in California, there is  
21 a federal mandate that says that in nonattainment districts,  
22 nonattainment areas, they must use an oxygenate, but this has  
23 simply been a choice of the refiners to meet the mandates of  
24 reformulated fuel, both federally and statewide.

25 CHAIRMAN LOCKYER: There seems to now be a shift,  
26 that maybe they're looking at alternatives.

27 MR. PARNELL: Very definitely. There are other  
28 alternatives that can be looked at, and we've been very



1 supportive on the Air Board of further inquiry into whatever  
2 contamination and at what levels there may be in ambient air and  
3 in water.

4 So, it's an issue that has to be dealt with and  
5 will be dealt with, I'm sure, as time goes along. There was  
6 legislation last year in your body that attempted to address the  
7 issue. It was signed into law.

8 I think there's a lot more investigation that  
9 needs to take place and will take place.

10 CHAIRMAN LOCKYER: Do you find that it's a good  
11 policy making and rule making forum? Do they seem to be  
12 conscientious, work together as a group in an effective way, and  
13 so on?

14 MR. PARNELL: Yes, Senator. I have to say, I've  
15 been both at the state level and federally in agencies, and I  
16 have always been very quick to compliment the Air Board, its  
17 staff, and the basic forum and the mix of people that have come  
18 together. I think they do an admirable job.

19 Clean air is a complicated issue, and we've done  
20 most of the easy things. Now we have a lot of difficult choices  
21 to make, and while we make those choices, we open up the forum  
22 to all interested parties. I think the Air Board particularly  
23 bends over backwards to see to it that the public in general are  
24 invited in to express their points of view, and we go to great  
25 lengths to make sure that stakeholders are attended to.

26 So, I've been very complimentary of the process.  
27 I think the Air Board is fulfilling a very, very important role  
28 and will continue to do so.

1 CHAIRMAN LOCKYER: Other questions? Senator  
2 Hughes then Senator Lewis.

3 SENATOR HUGHES: Thank you very much for being  
4 with us today.

5 Do you think the concern about the  
6 disproportionate effect of air pollution and other environmental  
7 hazards on minority and low-income communities is really  
8 justified?

9 MR. PARNELL: Well, it's something that we hear a  
10 lot about, and there is investigation going on as we speak.  
11 There's been a notice of a proposed lawsuit in that area.

12 And it's a difficult issue to really address,  
13 other than to listen to the parties that are involved, and to  
14 make certain that we don't disproportionately affect one  
15 economic group over another.

16 I don't discount the importance of the issue. I  
17 just simply haven't had enough exposure to tell you definitively  
18 today.

19 SENATOR HUGHES: For instance, in areas like  
20 mine, most people are driving older cars that have the potential  
21 of polluting the air, and they're not able to purchase cars that  
22 would be in a good condition, and consequently, they're impacted  
23 in a small area, and their children and their elderly are  
24 breathing this polluted air. So, it's almost predestined that  
25 they're going to have these kinds of circumstances.

26 Well, what do you think the ARB is doing to  
27 better understand the dimensions of the environmental justice  
28 issue, and what specific programs, policies and actions that you

1 would suggest that we utilize to address these concerns?

2 MR. PARNELL: Well, there was a piece of  
3 legislation. That debate ultimately will, and appropriately can  
4 be, was -- in fact last year -- addressed in some part by this  
5 body. And I think some of the issues that were brought forward  
6 in the debate last year went to the issue of Smog Check, for  
7 example, on those older cars. If the costs of repairing them  
8 exceeded a certain amount, that they would be given a time frame  
9 of two years to basically do whatever is necessary to bring them  
10 up to standard. And if they fail on the second check, then, of  
11 course, action would have to be taken before registration.

12 Those kinds of things are -- have been put in  
13 place and were agreed to and signed into law basically to try to  
14 address some of that issue.

15 SENATOR HUGHES: What has been your greatest  
16 frustration in serving on this Board, and what goals and  
17 objectives would you like to reach before your term is ended?

18 MR. PARNELL: Well, I guess the greatest  
19 frustration is, everyone wants clean air, but as in the case of  
20 all complicated regulatory issues, most people want it at the  
21 expense of someone else. And we find that we have to do a  
22 balancing. We have to make sure that whatever we do is done in  
23 the common sense way.

24 I don't mean to be throwing cliches, but I mean  
25 truly common sense. We've been, as you know, Senator, a  
26 technology-forcing agency. We've asked people to do things in  
27 response to better air that simply are technologically not a  
28 reality at this point, but putting the due date off to sometime

1 in the future. So, we're technology-forcing, and to that  
2 extent, we have to be very common sense about when we come down  
3 to the crossroads of implementation, we have to be very  
4 sensitive whether or not what we've requested is in the realm of  
5 do-ability.

6           You see, if you look at the record of the Air  
7 Board, it's been very conscious of those kinds of things. So,  
8 common sense and to be very flexible in the way we achieve clean  
9 air, which I think reformulated gasoline is a perfect example of  
10 that. We stated that we wanted gasoline to basically be  
11 formulated in a particular way to achieve clean air advantage,  
12 but we didn't dictate how the refiners were to do that. There's  
13 a great flexibility in how they achieve reformulated gasoline  
14 specs.

15           We think that's certainly one thing that we have  
16 to do, and to make sure that the clean air comes in something  
17 that can be deemed to be affordable. There are a lot of  
18 proposals that simply the cost is too high. So, we have to  
19 continually weigh the economics against the clean air benefits,  
20 that our motivation at the Board is to be cognizant of both of  
21 those things, but our agenda is clearly clean air, and we go  
22 down that path very diligently, and I think, have demonstrated  
23 with the great improvement in air over the past number of years  
24 is basically testimony to how well it's been accomplished.

25           We've made mistakes along with way. When we've  
26 made mistakes, we've backed up and recognized those mistakes and  
27 tried to go in a different direction.

28           SENATOR HUGHES: Thank you.



1           SENATOR LEWIS: Mr. Parnell, some of the  
2 environmental organizations are presently attempting to quality  
3 an initiative that would provide a couple hundred million-plus  
4 money in tax credits on an annual basis for certain pollution  
5 control strategies.

6           Have you had a chance to review that initiative?

7           MR. PARNELL: I really haven't reviewed that  
8 initiative. I'm really not prepared to comment. I'd be glad --

9           SENATOR LEWIS: My line of questioning was going  
10 to be on that, but since you haven't had an adequate chance to  
11 look into that yet, I'll just pass.

12          SENATOR AYALA: I have a question.

13          CHAIRMAN LOCKYER: Senator Ayala.

14          SENATOR AYALA: Mr. Parnell, I don't recall  
15 whether you informed me that MTBE was not a mandate of the  
16 Federal EPA to California. Is it a mandate?

17          MR. PARNELL: No, it is not. The federal  
18 government mandate says that in certain nonattainment areas,  
19 that the fuel refiners need to use an oxygenate. MTBE is an  
20 oxygenate, and MTBE is the choice of the refiners, but there is  
21 no mandate for them to use MTBE.

22          SENATOR AYALA: So, the refiners on their own  
23 added that?

24          MR. PARNELL: That's correct.

25          SENATOR AYALA: So, the only way you can stop it  
26 is through legislation, unless they stop it on their own. Why  
27 won't they do it?

28          MR. PARNELL: I think they are, Senator.

1                   SENATOR AYALA: They are doing it?

2                   MR. PARNELL: I think that there have been recent  
3 requests of the Board. And I can't recall offhand, but I  
4 believe it was Tasco, one of the big refiners. I don't -- I  
5 think it was Tasco, but I'm unclear on that -- has made a  
6 request to the Board to forgo using MTBE in favor of something  
7 else. And there is great flexibility.

8                   SENATOR AYALA: They're moving in that direction?

9                   MR. PARNELL: Yes. I don't know what the end  
10 result will be; it's hard to predict, but certainly they're  
11 cognizant of water contamination or MTBEs being found in  
12 groundwater and certainly are trying to take corrective action.

13                  SENATOR AYALA: I understand that diesel exhaust  
14 has been declared an air contaminant. When will that issue come  
15 before the Board? It's been eight years since the last report  
16 was made.

17                  MR. PARNELL: The diesel exhaust is an issue of  
18 science, obviously, and we're hearing a lot of reports right  
19 now, and it's unclear as to where that will come down. I  
20 believe it's to be heard -- help me -- in late summer, Senator.

21                  Even if it's listed, I would hasten to say, even  
22 if it were listed as an air contaminant, there are a lot of  
23 things that are in regular issue on a regular basis that are  
24 listed. It doesn't necessarily mean that we would try to do  
25 away with diesel fuel. It is our transportation system today as  
26 we know it.

27                  But certainly there is a concern, so that  
28 investigation continues forward.

1                   SENATOR AYALA: I don't have any questions,  
2 Mr. Chairman.

3                   CHAIRMAN LOCKYER: Any other issues?

4                   I wanted to do ask quickly on ethanol.

5                   I should correct a comment. I have realized  
6 that, while the slot or position you're appointed to includes  
7 meteorologists, chemical engineers, and agriculturalists, or  
8 lawyers, that the spot for you is not an engineer but an  
9 agriculturalist.

10                  MR. PARNELL: Agriculturalist.

11                  CHAIRMAN LOCKYER: And I wanted to make sure to  
12 correct that. In fact, your vita as an agriculturalist, of  
13 course, is extraordinary as Deputy Secretary for the whole  
14 country, and active in numerous ways locally as well as in the  
15 state. You've had quite a career.

16                  Ethanol, when the Chair was before us some months  
17 ago, there was a debate, a more active debate at the time, of  
18 what was the status of approvals, and there was some test  
19 leaked, or something that was happening.

20                  Does any of this ring a bell? Are you familiar  
21 with where your current workup on that --

22                  MR. PARNELL: My impression where it is  
23 currently, and I'm probably not as current as I should and could  
24 be if and when we get back to that issue, ethanol has been used  
25 from time to time as an oxygen in place of MTBE; but it has a  
26 NOx problem. When ethanol is burned, we basically increase NOx  
27 emissions, so there is a balancing that has to take place.

28                  There are certain people in the Midwest that

1 continue to be excited about ethanol.

2 CHAIRMAN LOCKYER: Mostly the people who grow  
3 corn.

4 MR. PARNELL: Most people who grow corn.

5 And it probably would be difficult to justify  
6 without tax treatment ethanol production. But that, I would  
7 have to be quick to say, that depending upon what happens in the  
8 future to MTBE, and how we're pushed to find other oxygenates,  
9 there may be fully fueled automobiles sometime in history using  
10 ethanol.

11 CHAIRMAN LOCKYER: Would you, when you have an  
12 opportunity, drop me a note, perhaps, or from the Chair,  
13 whatever, with a little more detail in terms of -- well, here  
14 are the questions that our staff workup includes. You might  
15 just respond to those for me, so that will give me a picture.

16 MR. PARNELL: Okay, thank you very much.

17 CHAIRMAN LOCKYER: Other questions from Members?  
18 Anyone present that wishes to comment, pro or con?

19 SENATOR AYALA: I'll move.

20 CHAIRMAN LOCKYER: We have a motion to recommend  
21 confirmation to the Floor. Call the roll on that, please.

22 SECRETARY WEBB: Senator Ayala.

23 SENATOR AYALA: Aye.

24 SECRETARY WEBB: Ayala Aye. Senator Brulte.

25 SENATOR BRULTE: Aye.

26 SECRETARY WEBB: Brulte Aye. Senator Hughes.

27 SENATOR HUGHES: Aye.

28 SECRETARY WEBB: Hughes Aye. Senator Lewis.



1 SENATOR LEWIS: Aye.

2 SECRETARY WEBB: Lewis Aye. Senator Lockyer.

3 CHAIRMAN LOCKYER: Aye.

4 SECRETARY WEBB: Lockyer Aye. Five to zero.

5 CHAIRMAN LOCKYER: Thank you, sir.

6 MR. PARNELL: Thank you very much.

7 CHAIRMAN LOCKYER: Keep up the good work.

8 MR. PARNELL: I'll try not to appear before you  
9 in the near future.

10 CHAIRMAN LOCKYER: Well, it probably won't be me,  
11 but maybe some of these other persons. Thank you.

12 Tony, come on up. Vitti is on the Trustees for  
13 the State University system.

14 Do you want to start with any opening commentary?

15 MR. VITTI: If you'd care to, I'd be glad to give  
16 you a little background.

17 Real quickly, I'm a lawyer. This is a  
18 reappointment to the Board of Trustees. I've already served  
19 eight years.

20 CHAIRMAN LOCKYER: Have you served eight?

21 MR. VITTI: Eight. Actually, I'm in my ninth  
22 year, and I certainly enjoyed serving.

23 I served as Chair of the Board for two years. We  
24 have term limits also in that regard.

25 CHAIRMAN LOCKYER: In eight years, what stands  
26 out in your mind as the toughest issue you had to grapple with,  
27 and the achievement or accomplishment that you would regard as  
28 the most significant?

1 MR. VITTI: Easy, two words: money, survival.

2 CHAIRMAN LOCKYER: The fact that you survived was  
3 the accomplishment?

4 MR. VITTI: I think that was the accomplishment.  
5 Certainly during my administration as Chairman, we went through  
6 what I'm sure all of us consider the worst downturn that the  
7 state has ever gone through. And that telescoped out,  
8 obviously, to our budget as well. And it was a very trying  
9 time.

10 As a Trustee, it was very difficult. As Chairman  
11 it was even more difficult, and as it was for our faculty, staff  
12 members and executive branch.

13 So, I think that really stands out in my mind.

14 I'm pleased to say is that we've survived it and  
15 certainly performing the mission of the University. And I'm  
16 proud of the fact that I had the opportunity to contribute  
17 during that period of time. Enjoyed it greatly, but it was a  
18 struggle.

19 CHAIRMAN LOCKYER: Are there questions that  
20 Members want to pose?

21 SENATOR AYALA: I'd like to ask, where is the  
22 University of San Fernando Valley located?

23 MR. VITTI: Northridge.

24 SENATOR AYALA: Where?

25 MR. VITTI: You mean San Fernando --

26 SENATOR AYALA: It says here, the University of  
27 San Fernando Valley.

28 MR. VITTI: Oh, you mean -- it's a law school.



1 It's now part of Laverne University Law School. It's a law  
2 school. It wasn't when I went there, which was 20-some odd  
3 years ago. It was in Sepulveda.

4 SENATOR AYALA: I just wondered where it was.

5 We had a long discussion earlier today, and I  
6 don't have any questions for Mr. Vittti.

7 CHAIRMAN LOCKYER: Senator.

8 SENATOR HUGHES: What was your position, and what  
9 is the position of the Board of Trustees on Proposition 209?

10 MR. VITTI: Well, I think I'd best answer that  
11 question by saying CSU is a university of access. Certainly  
12 that and maintaining quality are our two, I think, standards for  
13 the Board of Trustees and the system as a whole.

14 In terms of the affirmative action issue, from a  
15 political standpoint, I wouldn't want the Board to be involved  
16 in it. I see it as a political issue.

17 But we have not -- I think our university is a  
18 school or a university of access, and I think that answers the  
19 question.

20 Our concern is having the funds to fulfill that  
21 access issue, and that isn't always within our control.

22 SENATOR HUGHES: In the wake of this proposition,  
23 how would you assess the diversity that you have now in terms of  
24 the graduate and undergraduate levels? How do you think the  
25 University can improve the diversity of its student body?

26 MR. VITTI: I think I go back to the answer of  
27 the your last question by answering it the same way I answered  
28 the Chairman's question. That is, money.

1           We are always living with the concern -- now,  
2 with tidal wave two, it's exacerbated certainly in the future --  
3 but money is the issue. We can fulfill the mission if we have  
4 the dollars to do it.

5           SENATOR HUGHES: Are the Board of Trustees  
6 thinking about a long-term plan or policy for setting student  
7 fees in the future? And in your mind, what should be the  
8 overall goal of such a policy? For instance, affordability,  
9 predictability, things like that.

10          MR. VITTI: I think I speak for the Board pretty  
11 much by answering that with, if we are able to, fees would not  
12 be an issue. Fees would not be a question. Fees wouldn't be  
13 charged.

14          But again, dealing with the issue of dollars to  
15 support the University, we in the past have had to increase  
16 fees. And it wasn't an issue treated lightly at all by the  
17 Board of Trustees, certainly not by me personally. It was very  
18 painful.

19          And I think the sentiments of the Board are to  
20 avoid any increase in fees, provided it doesn't place the  
21 University in jeopardy of providing second-rate education.  
22 Access, again, and quality are the standards of this Board,  
23 very strongly guarded, and fees do get in the way of that  
24 access.

25          We, to the extent we can obviate it, we make  
26 every attempt to do so.

27          SENATOR HUGHES: I understand that there's  
28 something now called technology fees proposed by a few of the

1 campuses.

2 What do you think about this, and what's going to  
3 happen?

4 MR. VITTI: I assume -- I'll defer to Karen here,  
5 but I assume this is technology fees for --

6 SENATOR HUGHES: For the CETI proposal.

7 MS. YELVERTON: Do you want me to answer the  
8 question?

9 SENATOR HUGHES: Sure.

10 MR. VITTI: I'm not aware of any fees at this  
11 stage.

12 MS. YELVERTON: Two clarifications.

13 In the CETI proposal, which is the public-private  
14 partnership that we're all discussing together, there's no  
15 proposal for a fee. In fact, we would argue that mitigates ever  
16 having to have that conversation.

17 Second, we do have a campus-based fee policy that  
18 the Board has adopted that only allows a new fee with a vote of  
19 the students of the campus. So that is the new policy to ensure  
20 that there is a vote each and every time. If there's a proposal  
21 for something, the vote has to be taken by the students in the  
22 affirmative first.

23 SENATOR HUGHES: So that an individual campus can  
24 make a decision that would not necessarily cover the other  
25 campuses?

26 MR. VITTI: That is correct.

27 SENATOR HUGHES: It would be on their own to do  
28 that?

1 MS. YELVERTON: Correct.

2 SENATOR HUGHES: Thank you.

3 MR. VITTI: Thank you, Senator.

4 CHAIRMAN LOCKYER: Other questions?

5 Let's for a moment talk about CETI. Not the  
6 Search for Extraterrestrial Intelligence, but the one you're more  
7 closely associated with.

8 I guess the issues that I recall in this  
9 partnership discussion deal with whether there might be any  
10 student fee associated, or what costs might be borne by students  
11 as it's worked out, control of the partnership, evaluation of  
12 the productivity of the relationship, and then matters that  
13 relate to academic freedom, and campus governance, and the  
14 traditional respect for faculty involvement and student  
15 involvement in decisions.

16 Could you just maybe bring us up to date in your  
17 reflections on it?

18 MR. VITTI: I can.

19 Again, we are still being briefed on this issue.  
20 It's been put off to the March meeting for vote, so that allows  
21 more time for affected entities and parties to give us their  
22 input. So, it's a ways off in terms of voting.

23 I'm not completely in tune with everything that's  
24 going on with respect to the issue. As a matter of fact, when  
25 Senator Hughes had mentioned the possibility of fees being  
26 charged, it caught me by surprise because I was never aware of  
27 even a possibility of that respect of fees being charged to  
28 students. I'm still not, and I was pleased to hear that it's



1 not being considered.

2 SENATOR HUGHES: As Legislators, we all live in  
3 fear.

4 MR. VITTI: Yes, well, I'm not a Legislator, but  
5 unfortunately I live in fear also.

6 But basically, my understanding of CETI is that  
7 it's an infrastructure, a three hundred million-plus  
8 infrastructure that would be provided to the system, which is  
9 quite exciting as far as I'm concerned because it helps to take  
10 us into the 21st Century as a system. It is necessary in terms  
11 of education of future student bodies.

12 And again, this is something that we will be  
13 fully briefed on. And before anyone votes on it, all of the  
14 issues that you have raised, Senator, will be addressed and will  
15 have to be answered satisfactorily to the Board before any  
16 commitment is made.

17 CHAIRMAN LOCKYER: And you would think the Board  
18 would not be a rubber stamp of this sort of a policy matter.  
19 They'd want --

20 MR. VITTI: I don't see this Board as being a  
21 rubber stamp for anything.

22 CHAIRMAN LOCKYER: Good.

23 MR. VITTI: That's not been my experience on this  
24 Board.

25 CHAIRMAN LOCKYER: Good. That's important, and  
26 we like them to be committed, obviously, to the program and kids  
27 and institution, and feel like they're independent and do the  
28 best job they can of dealing with that responsibility.

1           SENATOR LEWIS: Just a quick question with regard  
2 to this CETI partnership.

3           Can you tell me what was the procedure for  
4 picking, or how the private sector partners were brought into  
5 this? Was there an opportunity given to everybody to  
6 participate?

7           MR. VITTI: Well, I believe it came in through  
8 the institute which has been newly formed in the last few years  
9 for the system. And I'm not at all sure who approached who, and  
10 who the spark in the initiation of the negotiations was.

11           And the only input I've gotten is general  
12 information and description of what the joint venture is  
13 attempting to accomplish and what the structure is.

14           SENATOR LEWIS: Has there been any major  
15 complaints from anybody that felt left out from this kind of  
16 procedure?

17           MR. VITTI: I have heard that there have been  
18 some requests to, you know, participate. And I can assure you  
19 that the Board will make every attempt for all of the  
20 constituencies involved to give their input on the issue.

21           SENATOR LEWIS: Thank you.

22           CHAIRMAN LOCKYER: Tony, I wanted to ask also  
23 about salary issues. The Vice Chancellor Mr. West, I think,  
24 when these matters were discussed last year in the budget  
25 context, indicated that there was forthcoming some sort of a  
26 plan to attempt to examine those areas where we've lagged  
27 significantly behind national norms. Faculty pay would be one.  
28 Perhaps some of the classified employees units, there's a claim



1 that perhaps some of those are lagging behind. Whatever the  
2 facts may be in those respects, that there be a plan to address  
3 them over time. In the case of faculty, I guess we're getting  
4 close to in excess of 10 percent, maybe a 12-13 percent lag.

5 Has there been a plan? I know we're changing --

6 MR. VITTI: We're in the throes of changing guard  
7 a bit.

8 CHAIRMAN LOCKYER: -- Chancellors.

9 MR. VITTI: I would say that when I first joined  
10 the Board, that issue, the issue of faculty gap in salaries, and  
11 the issue of executive gap in salaries were foremost on  
12 everyone's list. But we, having hit the economic conditions  
13 that we hit, were unable to do anything about it.

14 We've only recently, again, after eight years of  
15 my being on the Board of Trustees, were able to do something to  
16 fill the gap on the executive level.

17 I can tell you from a personal standpoint, I am  
18 on the committee to examine the solution of the faculty gap  
19 issue, which obviously involves collective bargaining, the  
20 availability of funds. But we are talking about a significantly  
21 larger issue. We're talking about \$110 million to fulfill that  
22 gap annually. It's not an one-time shot. It's every year.

23 And we need the support of the Legislature in  
24 this regard. This is one of my goals. It was one of my goals  
25 in my first eight years, to bring executive compensation up to a  
26 level that was respectable. And it is my goal to do the same  
27 with faculty and at least play a role in bringing it along  
28 coming up with a plan.

1                   A plan would have to involve this building. So,  
2 a plan doesn't do us any good. It has to be a cooperative  
3 effort on the part of the Legislature, the Board of Trustees,  
4 and Governor.

5                   CHAIRMAN LOCKYER: Do you recall what the lag was  
6 in executive comp?

7                   MR. VITTI: Executive comp was approximately 30  
8 percent. The compensation lag on faculty, I believe, is about  
9 10 percent.

10                  CHAIRMAN LOCKYER: What did it require in the way  
11 of ongoing expenditures to try to close the executive comp gap?

12                  MR. VITTI: I'm speaking off the top of my head,  
13 but I think it was about a million-seven.

14                  MS. YELVERTON: I think it's even less than that.

15                  MR. VITTI: A million-three, a million-two to  
16 fill that.

17                  And we were way behind and losing people.

18                  Keep in mind, once you lose them because of  
19 compensation, you end up having to raise the level for the next  
20 guy in order to get him. So, we're punishing ourselves and  
21 punishing our people.

22                  And we have gained so much. I'm convinced that  
23 the policy making that this Board of Trustees has endeavored to  
24 take was responsible for our being able to hire Chancellor  
25 Reed. It's really advocated a position and a philosophy that  
26 has been well received in the academic world. I think it was  
27 real important for us to do it.

28                  We need to do it at the faculty level as well,

1 and we request all the help we can get.

2 CHAIRMAN LOCKYER: Obviously, if that's 100 times  
3 more expensive, or whatever, that may obviously be daunting. It  
4 sometimes is discouraging to have management move up, and the  
5 people that are there for the essential mission feel left  
6 behind.

7 If there were a plan in place to address it, it  
8 would feel --

9 MR. VITTI: There is a committee in place that is  
10 endeavoring to come up with -- I'm not sure we can call it a  
11 plan -- but a program, and a mapping out, a procedure to get us  
12 there.

13 But, you know, it's odd that my answer to every  
14 question has been money.

15 CHAIRMAN LOCKYER: Well, and we understand that  
16 that's a fundamental reality.

17 We try to get a feeling for people's philosophy  
18 and perspective. At least it helps to help have us understand  
19 these things.

20 Senator Ayala.

21 SENATOR AYALA: We discussed briefly the fee  
22 schedules that you have for the students. In 1990-91, it was  
23 780. By 1994, it had more than doubled. Now it went back a  
24 little bit this year.

25 I don't like to see students refused entrance on  
26 the fact that they're not financially able to cope with the  
27 fees. If they have the means, fine.

28 Shouldn't we have some kind of a program that,

1 for those students that you can qualify as not being able to pay  
2 the entrance fee, be given jobs around the campus to make up the  
3 lack of the fact that they don't have the means?

4 I don't think we should exclude people on the  
5 strength of financial disability.

6 MR. VITTI: I wholely agree you, and this  
7 certainly was one of the issues. It's hard, perhaps, to  
8 believe, but raising fees \$150-200 a year may seem like nothing  
9 to us, but you lose people, and you lose a significant number of  
10 people when you do that.

11 There are -- and I'm not an expert on the  
12 programs -- but there are programs, subsidy programs available,  
13 and provided certain economic conditions are met.

14 One of the things that always concerned me was  
15 the complexity of those programs and the application process.  
16 I wanted to see almost a credit card kind of availability to  
17 make it simpler for students to obtain the dollars if they  
18 couldn't afford it and met the requirements of the system.

19 SENATOR AYALA: But you're not in favor of  
20 balancing the budget on the backs of students by raising the  
21 fees?

22 MR. VITTI: No, but unfortunately the reality is,  
23 we needed to keep these universities in operation and had to  
24 raise fees at various levels.

25 SENATOR AYALA: There must be other means where  
26 you could cut back, but you shouldn't exclude anyone, and you're  
27 doing that because of the fact that they can't afford the  
28 entrance fee.



1 MR. VITTI: At that stage, we -- and again, the  
2 Board, based on input we were getting, we were at the end of the  
3 line in terms of cutback. And we were starting to cut into the  
4 bone and couldn't go any further with it.

5 At that point, with nothing else available,  
6 raised fees.

7 We have also changed the culture of this system  
8 in terms of advancement in raising outside funds. Some of the  
9 new presidents we've brought in have been just expert in raising  
10 dollars and increasing the moneys that are raised from outside  
11 sources by a hundred times what they were previously.

12 SENATOR AYALA: Do you treat graduate students in  
13 terms of fees the same as you do undergraduate students?

14 MR. VITTI: No, it's different. Different  
15 pricing level.

16 SENATOR AYALA: The ones going after their Master  
17 and Ph.D?

18 MR. VITTI: Or a second degree, for that matter.  
19 Once you have a degree, you know, there are perpetual students  
20 out there.

21 SENATOR AYALA: Thank you.

22 MR. VITTI: Thank you, sir.

23 CHAIRMAN LOCKYER: Senator Hughes.

24 SENATOR HUGHES: At this time I'd like to ask  
25 that we put this over until next week. I still have some  
26 questions that need to be answered.

27 CHAIRMAN LOCKYER: We do that as a courtesy if  
28 there's a Member that wishes a week's delay.

1                   SENATOR HUGHES: Not from you, but from someone  
2 else.

3                   CHAIRMAN LOCKYER: We'll schedule it for whatever  
4 time. I don't know that you'll need to make an appearance. I  
5 think perhaps there's some questions, especially at least what I  
6 heard, related to the plan, or development of one, that might  
7 address the salary gaps. If we could get some more information  
8 on that.

9                   MR. VITTI: Sure, be glad to.

10                  CHAIRMAN LOCKYER: And whatever else Senator  
11 Hughes had in mind, and we'll get back to it quickly.

12                  MR. VITTI: Very good.

13                  CHAIRMAN LOCKYER: Thank you.

14                  MR. VITTI: Thank you, Senator.

15                  CHAIRMAN LOCKYER: Is there any testimony in  
16 support?

17                  MR. GURIAN: I'm Bob Gurian. I'm the Legislative  
18 Director for the California Faculty Association.

19                  I'm not in front of you today to speak for or  
20 against the confirmation of Trustee Vitti. I will say that  
21 Trustee Vitti has been one of the more engaged and more  
22 accessible of the Trustees.

23                  However --

24                  CHAIRMAN LOCKYER: Who's the least? No, tell me  
25 privately.

26                  MR. GURIAN: I will say, however, that in our  
27 view, the Trustees have failed to protect the greatest asset  
28 that the California State University has, and that's the



1 faculty.

2 The faculty salary lag three years ago, I think  
3 it was -- my numbers may not be exactly right, but I think it  
4 was about 9.8 percent. Last year, it went up to 10.8 percent.

5 Chancellor Munitz repeatedly over last year  
6 promised the development of a plan to close the CPEC salary lag.  
7 Now, CPEC, as you know, is the California Postsecondary  
8 Education Commission. What they do is, they compare the  
9 salaries of the CSU to 20 comparable institutions around the  
10 country. Now, we can get into a debate as to how comparable  
11 they are. Suffice it to say the position of the union has  
12 always been, it's something like 75 percent of the campuses in  
13 the CSU are in one of the ten highest cost of living counties in  
14 the United States. We only have one comparison institution that  
15 is in a similar position.

16 Suffice to say that however --

17 CHAIRMAN LOCKYER: Who is that?

18 MR. GURIAN: The University of Southern  
19 California.

20 Having said that, last year Chancellor Munitz  
21 repeatedly promised the faculty that the CSU would develop a  
22 plan to close the faculty salary lag. Senior administrators in  
23 the CSU sat at this very table during budget deliberations and  
24 promised a plan.

25 There is still no plan.

26 This is not just a matter of money. How can I  
27 say that, because we all know there's been a really bad  
28 financial situation?

1           Compare the CSU to the University of California.  
2 About three or four years ago, the lag in the UC was about the  
3 same as the lag in the CSU. The University of California  
4 adopted a plan and aggressively tried to deal with salary  
5 numbers for the UC faculty. The UC got same amount of support  
6 essentially as the CSU did.

7           In fact, if you look this year's budget, in the  
8 Governor's Budget Summary document that they passed out on  
9 January 10th, in that document is the continuation of the UC  
10 plan to close the UC salary lag. In the CSU, as pointed out,  
11 there is no plan.

12           We've also been told this year by a senior  
13 administrator in the CSU who is in a position to know, has told  
14 us that not only will there continue not to be a plan, but that  
15 the CSU has no plan to address the salary lag.

16           SENATOR HUGHES: Well, you know, Mr. President,  
17 with the onset of term limits, I think they're really missing  
18 out on good recruitment from Legislators who will no longer be  
19 here, from staff people who might choose to leave and want to  
20 share their expertise and there insight into various areas, not  
21 only into political science, but there are many people who have  
22 expertise in other areas.

23           So, they need not go on a nationwide hunt for  
24 people who are skilled and knowledgeable. So, if they're just  
25 going to leave it open to UC to recruit the cream of the crop,  
26 that's sad.

27           And I would hope that you would urge your  
28 colleagues to strongly consider this, because you have people

1 who are acquainted with the problems of California, who know  
2 about the expertise, know about the industries here in our  
3 state. And they could utilize this person power force.

4 But if they don't offer decent salaries, nobody  
5 will ever even consider it.

6 We should be getting some of these people  
7 attracted to the State University system.

8 MR. GURIAN: In agreement with what Senator  
9 Hughes was saying, which is, perhaps, why we're so concerned  
10 about the salary lag, CPEC says that we're going to have the CSU  
11 share of the tidal wave two will be 100,000 additional students.  
12 In addition, we already know that the bulk of our faculty will  
13 be retiring within the next seven to ten years.

14 We are not going to be able recruit quality  
15 faculty to come to the CSU to teach the next generation of  
16 students. And unless we hire quality faculty who are really at  
17 the top end of the knowledge scale, then our graduates are just  
18 not going to be very competitive going into California  
19 business. That will have a ripple effect all through  
20 California's competitiveness and the ability to compete in the  
21 job market and in the corporate market over next couple of  
22 generations.

23 This is an enormous problem. And unfortunately,  
24 we've not been able to get the Trustees to address the problem  
25 at all. And we come to you, as we will come to the Budget  
26 Committees during the course of the session, to try to get the  
27 CSU to become a little bit more responsible.

28 Whatever you can do would be very helpful.

1 CHAIRMAN LOCKYER: Thank you.

2 Any other comment at all?

3 Mr. Vitti, maybe you could help us know not so  
4 much the outcome, because it's obviously dependent on the  
5 Governor and the Legislature, and so on, in some of the funding  
6 questions, but if there's the potential for some specificity to  
7 the more general promise that Chancellor Munitz has made of  
8 having some plan that would address this, contingent, obviously,  
9 on funding. Maybe you could help us before we resume on knowing  
10 more about that.

11 MR. VITTI: Sure. Senator, I can assure you that  
12 I'm on the committee. It's been formed. We are going forward  
13 with it. I give you that assurance.

14 CHAIRMAN LOCKYER: Okay, give us a little more  
15 detail on it.

16 MR. VITTI: Sure, I'll be glad to.

17 CHAIRMAN LOCKYER: Thank you very much.  
18 Appreciate your appearance as usual, and your interest and  
19 commitment to making this a better system.

20 How do you figure only 100,000?

21 MR. VITTI: I thought it was 500,000.

22 CHAIRMAN LOCKYER: I thought we were going to  
23 have a million in 2010 that can't get into college in  
24 California. I don't know how those divide between the three  
25 segments.

26 MR. GURIAN: The CPEC number, I think -- although  
27 I heard the Appropriations Committee said it different -- but  
28 the CPEC number, I think, is 500,000, which CSU's share would be



1 100,000.

2 CHAIRMAN LOCKYER: Of that, all right, and that  
3 may be 2005 rather than 2010.

4 Thank you, Tony.

5 MR. VITTI: Thank you.

6  
7 [Thereupon. This portion of the  
8 Senate Rules Committee hearing was  
9 terminated at approximately 2:40 P.M.]

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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

STAN NEAL, Consultant to SENATOR BRULTE

ALSO PRESENT

ROBERT G. BEVERLY, Member  
California State Lottery Commission

SENATOR KEN MADDY

RICHARD E. MALLORY, Director  
Department of Housing and Community Development





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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Gubernatorial appointees, Senator Beverly, nice to see you. We have a motion by Senator Lewis to confirm you.

SENATOR LEWIS: Wait just a minute.

[Laughter.]

SENATOR BEVERLY: It's a pleasure to be here.

CHAIRMAN LOCKYER: Have you actually yet been to some of these meetings?

SENATOR BEVERLY: Yes, I've been to eight or nine meetings.

CHAIRMAN LOCKYER: Eight or nine. I'm delighted that in 1970, the Trail Lawyers honored you.

SENATOR BEVERLY: The Trail Lawyers.

CHAIRMAN LOCKYER: That's what your biography says.

Want to tell us anything about this, what the hardest thing so far has been?

SENATOR BEVERLY: Well, the hardest thing, I suppose the adoption of what we call the bridge project, which is a budget which cuts back on staffing and expense of the operation of the Lottery. We find, our study reveals we can do with less manpower, person power, than we have presently. I think it's going to be beneficial.

CHAIRMAN LOCKYER: Are there questions from colleagues? Is there anyone here who would care to make a





comment, testify for or against the nomination? Senator Ayala.

SENATOR AYALA: I'd like to say that I met with another gentleman who's also appointed. I was surprised when I asked him, do you have any ideas how we can improve the program itself? He said, I'm not into that.

I said, how are we going to find out if you experts don't tell us what is taking place? He was reluctant to tell me how, if anything, we could do to improve the system.

I don't know, but I thought maybe he would know since he's been a member for quite some time.

I'll ask Bob, what is it that you think needs to be done from the Legislature?

SENATOR BEVERLY: I mentioned the probable excess of personnel. We are going to reduce staffing.

The goal of the Lottery, of course, is to raise money for education. That's the primary goal, the one real goal.

We've taken some action since I've been there. I don't know if I can take credit for it, but it has been on my watch, our watch. We have increased the prize money payable for the Scratchers, and there's a direct ratio between the prize money and the sales of Lottery tickets.

We have also adopted a policy of giving the winner of Big Super Lotto, the weekly Wednesday-Saturday Lotto, the option of taking the money up front rather than pass it out over 20 years. That should result in increased sales as well, according to studies we made of other states.

SENATOR AYALA: I'm glad you're willing to talk



1 about it, because the gentleman didn't feel that, as member, he  
2 should not be involved, and it should be done from within  
3 without bothering the Legislature. But if they don't do it,  
4 someone has to if there's something to be corrected, that is.

5 I don't know. I'm not familiar with the  
6 operation at all.

7 SENATOR BEVERLY: The relations between  
8 Legislature and the Lottery Commission have not been of the  
9 best, highest order over the years. We hope we can improve  
10 that.

11 CHAIRMAN LOCKYER: We miss you. I want to just  
12 add that for the record.

13 SENATOR BEVERLY: Thank you.

14 CHAIRMAN LOCKYER: Senator Hughes.

15 SENATOR HUGHES: Congratulations or condolences.  
16 I don't know what to offer you.

17 What is your greatest frustration now as you  
18 change your role as a legislator and you're on this Lottery  
19 Commission that everybody's been looking at with jaundiced  
20 eyes? What is your greatest frustration?

21 SENATOR BEVERLY: I don't know that I have any.  
22 Two things continually amaze me. One, the public is still under  
23 the impression that the Lottery raises a great majority of  
24 funding for schools. It raises about two percent of the overall  
25 cost. That's all. It was over sold.

26 And I was one who opposed the Lottery, by the  
27 way, when it was on the ballot, and probably most of us here in  
28 the Legislature did.





1           The other point that's been raised, as I  
2 mentioned, we are changing the policy so you can win the money  
3 up front. That's a point that's been raised.

4           SENATOR HUGHES: Do you think that a lot of  
5 people will take advantage of that? And if they don't, does  
6 that put the Lottery Commission in a big bind in terms of  
7 raising the money and investing as you do now?

8           Do you invest the money, and that's why you want  
9 to do it over a 20-year period?

10          SENATOR BEVERLY: It shouldn't make any  
11 difference.

12          SENATOR HUGHES: It shouldn't?

13          SENATOR BEVERLY: No, it won't be a problem, I  
14 don't think. They'll have the option of going either way.

15          SENATOR HUGHES: Thank you.

16          SENATOR LEWIS: Just one quick question, Bob.  
17 There's some the controversy or question as to  
18 whether or not the minimum age for being allowed to legally  
19 purchase Lottery tickets should be raised from 18 to 21.

20          Do you have an opinion on that?

21          SENATOR BEVERLY: I haven't heard anybody making  
22 that point. I haven't thought about it, frankly. I don't have  
23 a position.

24          SENATOR MADDY: Mr. Chairman.

25          CHAIRMAN LOCKYER: We'll note Senators Maddy and  
26 Foran as supporters.

27          SENATOR MADDY: I'm sorry I wasn't down here,  
28 Mr. Chairman.



1 I'm Senator Maddy from the 14th District.

2 If there's anyway we can save this one --

3 CHAIRMAN LOCKYER: I'm trying to get done in 20  
4 minutes here.

5 SENATOR MADDY: I just wanted to say, if we could  
6 put the matter out so we can have a chance to work the Floor.

7 [Laughter.]

8 CHAIRMAN LOCKYER: We're ready to vote on it.

9 SENATOR BEVERLY: I did not solicit any witnesses  
10 to appear here.

11 SENATOR LEWIS: Move.

12 CHAIRMAN LOCKYER: Call the roll. We have a  
13 motion from Senator Lewis.

14 SECRETARY WEBB: Senator Ayala.

15 SENATOR AYALA: Aye.

16 SECRETARY WEBB: Ayala Aye. Senator Brulte.

17 SENATOR BRULTE: Aye.

18 SECRETARY WEBB: Brulte Aye. Senator Hughes.

19 SENATOR HUGHES: Aye.

20 SECRETARY WEBB: Hughes Aye. Senator Lewis.

21 SENATOR LEWIS: Aye.

22 SECRETARY WEBB: Lewis Aye. Senator Lockyer.

23 CHAIRMAN LOCKYER: Aye.

24 SECRETARY WEBB: Lockyer Aye. Five to zero.

25 SENATOR BEVERLY: Thank you very much.

26 CHAIRMAN LOCKYER: Mr. Mallory is our next  
27 person.

28 Perhaps we can stay focused on the areas that we





1 left off, if we might, Mr. Mallory.

2 MR. MALLORY: Yes, be happy to.

3 CHAIRMAN LOCKYER: I guess one was the idea of  
4 having a comment period on whatever draft EIR is produced that  
5 would be a little bit more extensive.

6 Have you had chance the check the law on that and  
7 see what might be possible?

8 MR. MALLORY: Yes, I have. The law provides for  
9 a minimum of thirty days and a maximum of ninety days. Sixty  
10 days, which was suggested, is very reasonable, and I'd be happy  
11 to do that.

12 CHAIRMAN LOCKYER: That's great.

13 Then I think there was some desire to have some  
14 interaction with technical experts during the course of the  
15 workup. Can you accommodate those worries?

16 MR. MALLORY: Yes, Senator. We've agreed to hold  
17 two public information meetings during the period in which we're  
18 pulling the draft EIR together, and I think that's acceptable.

19 CHAIRMAN LOCKYER: Good.

20 Are there other questions from Members?

21 Senator Brulte, I think, was ready --

22 SENATOR BRULTE: Move it.

23 CHAIRMAN LOCKYER: -- to make a motion on the  
24 matter.

25 May I substitute the prior roll been then on the  
26 recommendation of Senator Brulte.

27 [Thereupon the prior roll was  
28 substituted and the final vote



1                   was 5-0 for confirmation.]

2           CHAIRMAN LOCKYER: Thank you, sir. Good luck.

3           MR. MALLORY: Thank you, Senator.

4           [Thereupon. This portion of the

5           Senate Rules Committee hearing was

6           terminated at approximately 3:46 P.M.]

7                   --ooOoo--



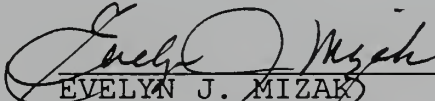
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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

STAN NEAL, Consultant to SENATOR BRULTE

ALSO PRESENT

ROBERT A. WOLF, Member  
California Transportation Commission

SENATOR QUENTIN KOPP

KATHRYN M. DRONENBURG, Member  
State Board of Education

BILL LUCIA, Executive Director  
State Board of Education

WILLIAM P. DUPLISSEA, Member  
Occupational Safety and Health Appeals Board

MARY JANE FORSTER, Member  
State Water Resources Control Board

SENATOR WILLIAM CRAVEN



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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: We've been asked to accommodate a schedule problem for Mr. Wolf. I hope that doesn't create some difficulty for other appointees who are with us, but if we could start in that way.

I believe, Senator Kopp, were you going to make an introduction?

SENATOR KOPP: Yes, Mr. Chairman.

CHAIRMAN LOCKYER: Mr. Wolf has been appointed to the California Transportation Commission.

MR. WOLF: Good afternoon.

CHAIRMAN LOCKYER: Senator Kopp.

SENATOR KOPP: Mr. Chairman and Members, this is a happy responsibility for me, presenting Robert Wolf to the Committee for recommendation to confirm his appointment to the California Transportation Commission.

Mr. Wolf served with spirit and with as high an intensity of interest as anybody I've ever known in eleven years, or more than that, actually, before I was elected to the Legislature --

CHAIRMAN LOCKYER: He served with spirits?

SENATOR KOPP: With spirit, the kind that you and I are pursuing for the next couple of months, and may I compliment you on your elegant appearance.

CHAIRMAN LOCKYER: Thank you.

SENATOR KOPP: I strive to emulate you.

SENATOR BRULTE: It's the hair.



1 CHAIRMAN LOCKYER: I'm sorry if I've gotten us  
2 off the track here.

3 SENATOR KOPP: But anyway, Bob Wolf is  
4 unsurpassed in his knowledge of the arcane subject of  
5 transportation financing. And we hope that it'll be a little  
6 less arcane and less complicated and difficult for people to  
7 understand who aren't among that small number who deal in  
8 transportation issues.

9 That leads to a second point, we passed last  
10 year, and I think the commentators and the public at large are  
11 beginning to realize the momentous nature of SB 45. I don't  
12 make that statement because of pride of authorship, but because  
13 it has changed the entire decision-making process for  
14 transportation projects, and Mr. Wolf was an integral part of  
15 the promulgation of that measure and its various modifications  
16 over a two-year period. And, of course, he served in the  
17 capacity as the Undersecretary of Business, Transportation and  
18 Housing during the first of those two years, and then in 1997,  
19 was reappointed to the California Transportation Commission.

20 And I just can't think of a better person to  
21 recommend for this particular responsibility than Mr. Wolf. I  
22 urge the Members of the Committee to recommend approval of his  
23 appointment.

24 CHAIRMAN LOCKYER: Thank you, Senator.

25 Did you want to begin with any opening comment at  
26 all?

27 MR. WOLF: Mr. Chairman and Members, for the  
28 record, Robert Wolf. My thanks for that wonderful introduction

1 by the Senator.

2 I should just ask if there's any questions, and  
3 the other is to appreciate the accommodating of the time. That's  
4 very kind of you.

5 CHAIRMAN LOCKYER: Let me ask if there are  
6 questions that Members have. Senator Ayala.

7 SENATOR AYALA: Currently we have the Caltrans  
8 with an overhead of 15 percent for administrative work.

9 Do you think that's excessive to have 15 percent  
10 of a project go for administration?

11 MR. WOLF: Mr. Chairman, Senator, to respond to  
12 that, one of the, I think, most important factors of SB 45, one  
13 that will lead to real -- a real revolution in the way that we  
14 do administer the costs associated with what I'll call overhead  
15 in a general sense, is that for the first time it has to be  
16 arrayed in the public documents that go forward, that are put  
17 forward to the public through the Transportation Commission.

18 So, by having these costs brought to sunshine and  
19 some determining factor as to what those costs are, and whether  
20 they are appropriate, for the very first time with this new  
21 legislation we will see exactly what they are, and for the first  
22 time, be able to get our arms around it and have some control  
23 over them.

24 So, do I feel they're excessive? Very much so.  
25 Do I feel that we can address them? Only now can we start to  
26 address, given the new light that the legislation sheds upon the  
27 process.

28 SENATOR AYALA: Do you think that seismic



1 retrofitting should have a priority over new  
2 construction.

3 MR. WOLF: Senator, I think the safety of the  
4 motoring public is the number one duty of the Department. And  
5 certainly, seismic retrofit is a major part of providing for the  
6 safety of the traveling public.

7 I am personally delighted; the resolution that's  
8 embodied in SB 60 last year that came -- finally brought to  
9 closure how those are paid for. And I think it's now the duty  
10 of the Department to go forward and make sure that the motoring  
11 public is, indeed, safe, not only from those things that are  
12 evident in the everyday transportation world, but certainly from  
13 the possibilities brought forth by seismic events.

14 SENATOR AYALA: So whatever we have, the public  
15 must be safe.

16 MR. WOLF: Must be safe.

17 SENATOR AYALA: Thank you.

18 MR. WOLF: Thank you, Senator.

19 CHAIRMAN LOCKYER: Other questions? Senator  
20 Hughes.

21 SENATOR HUGHES: Mr. Wolf, how large is Caltrans?  
22 How many people, roughly, do you employ in this agency?

23 MR. WOLF: Senator, just for total clarification,  
24 the Commission is the honest broker and is not the Board of  
25 Directors, if you will, of the Department.

26 The Department, through its director, reports to  
27 the Secretary of Business, Transportation and Housing. And so,  
28 to say that the Commission employs anyone, they don't.

1 But to answer the question as I understand it, I  
2 believe the current employment is about 17,000 employees.

3 SENATOR HUGHES: All right.

4 Do you think that our state can meet the  
5 transportation needs under exiting funding sources that we  
6 have?

7 MR. WOLF: The answer is a complex one. Let me  
8 answer in this manner, that the Commission puts forth an annual  
9 report to the Legislature. And it has historically gone on  
10 record saying that to meet the needs, the total needs, of the  
11 transportation infrastructure of the State of California, the  
12 current funding sources are not adequate.

13 Now, having said that, the current fund of money  
14 that's available right now has been building steadily for any  
15 number of reasons, and we can go into them. So, to go and to  
16 discuss this with the public at large about possibly bringing  
17 more funding sources or methodologies into play, while we have  
18 well over a billion-three sitting in our account, does not seem  
19 like a very good tact to say.

20 Let me further say that again, SB 45 allows for  
21 money to be used in most appropriate manner. And that is to say  
22 that prior to the enacting of that legislation, we were asking  
23 the wrong questions for the wrong reasons. We were asking, how  
24 do we find a project that fits a certain funding source.

25 The legislation has erased that, and what were  
26 nine sort of artificial pots of money are now two very clear  
27 pots of money, yours and ours, and we can ask the right  
28 questions, and that is, how do we most cost effectively and

1 efficiently get people, goods and services from point A to  
2 point B.

3 That mechanism alone goes a long way towards  
4 getting more value for the dollars we already have, and I think  
5 that's what business we're all in.

6 SENATOR HUGHES: So, that is your plan for this  
7 coming legislative year?

8 MR. WOLF: The Commission does not put forth  
9 legislation. The Commission comments on --

10 SENATOR HUGHES: Suggests, and will that be your  
11 recommendation?

12 MR. WOLF: As I understand it, Senator, we will  
13 make a strong recommendation that we adhere not only to the  
14 letter of the law, but certainly the principles embodied in  
15 SB 45, and that's get more bang for the buck.

16 SENATOR HUGHES: In 1990, the trial court  
17 enjoined Caltrans for privately contracting out for engineering  
18 and inspection services. And the trial court found that  
19 Caltrans failed to show that these contracts were more cost  
20 effective or that state employees could not adequately perform  
21 this work.

22 What are you recommending that Caltrans do, or  
23 what are they going to be doing about this situation?

24 MR. WOLF: I think I can respond to the question,  
25 Senator. I think you're saying, how are we responding to the  
26 fact that what was anticipated to be contracted out, perhaps, in  
27 the Governor's budget is now going to be done by public  
28 employees.

1 I think, again, that is not a Commission  
2 responsibility, but as I understand it, the Legislature has seen  
3 fit to convert a number of PYEs to PYs so that the Director  
4 could hire additional engineering support staff in the  
5 Department, and I believe the Director's hard at it. The courts  
6 have spoken, and I think the Director's responding  
7 appropriately.

8 SENATOR HUGHES: And you think that they're going  
9 to revise procedures to ensure that only work not adequately and  
10 competently done within Caltrans can be contracted out?

11 MR. WOLF: I think that -- and I can't speak for  
12 the Director, I wouldn't do that -- but as I understand the  
13 Director's intent, it's to live up to the letter of the law as  
14 he understands it. He is required to hire public employees to  
15 perform many of the jobs anticipated early on to be done by  
16 contracting out. But I'm not speaking for the Director.

17 SENATOR HUGHES: But are you fully in accord that  
18 this should be the direction that the Director should take?  
19 That's my question.

20 MR. WOLF: If you're asking me personally --

21 SENATOR HUGHES: Yes, personally.

22 MR. WOLF: Personally, I, like everyone else,  
23 will live up to the letter of the law. And the courts have  
24 spoken, and as such, that's the direction that should be taken.

25 Let me say that there are those that would  
26 characterize, if I may, Mr. Chairman, just expand on that, there  
27 are those that would characterize a belief in contracting out as  
28 to be anti-government employees.



1           Let me just characterize that a different way and  
2 say that it's with a concern for the future of the Department  
3 that many people are interested in contracting out certain parts  
4 of business. Let me explain that, if I may, Senator.

5           That is to say that when we look to bring young  
6 men and women into the public domain to work, we certainly can't  
7 offer them more money than they can get in the private sector,  
8 so what do we have to offer them?

9           What we have to offer them is some certainty as  
10 to the ability, number one, to keep a job; and number two, to  
11 advance within the ranks to the extent that their abilities  
12 would allow them to do so.

13           If we constantly hire and then lay off, and hire  
14 and lay off to meet the cyclical needs of the availability of  
15 funding for transportation, and in that arena only, then you've  
16 erased a lot of the benefits associated with public service.

17           The alternative would be to establish a basal  
18 rate, if you will, of public service, where people could be  
19 certain of employment, be certain of the opportunity to advance  
20 within those ranks to the extent of their own personal  
21 abilities, and then take care of these oscillating amounts by  
22 contracting out. So, there are those who look at it in that  
23 direction as well.

24           I personally look at it as, the courts have  
25 spoken, and we certainly have to be harmony with the courts.

26           SENATOR HUGHES: Thank you.

27           CHAIRMAN LOCKYER: Staying on this topic, if we  
28 may, and it's only because of our momentary experiences in

1 previous years where these matters were before the Legislature  
2 that I stay focused in on the matter, at the time I think you  
3 had a responsibility to respond to the philosophy of your  
4 Governor, and you did that better than I would have preferred.  
5 So, I recognize your skillfulness there.

6 I might also add that, as one who, during the  
7 last several months, spent considerable time in the Inland  
8 Empire, I note you have a lot of committed advocates in both  
9 public and private sectors in that part of the state that think,  
10 I believe correctly, that that part of the state is often  
11 neglected with respect to transportation planning. They  
12 appropriately feel that you'll be a voice where there often  
13 hasn't been one. I think the region is entitled to that  
14 representation.

15 Let's stay for a moment, if I may, on the issue  
16 of contracting out, because while we obviously all are obligated  
17 to follow and obey the law, we also make changes in the law from  
18 time to time.

19 I understand your basic philosophy of maintaining  
20 a pool of engineering services that's sufficient for the state,  
21 but perhaps to look to the private sector for peaks in demand on  
22 those services, or maybe some specialty work. I think that's a  
23 very commonly shared philosophy by Republicans and Democrats and  
24 Independents in the Legislature.

25 Perhaps the problem is defining what's the base,  
26 and what's a specialty service that we don't have internally.

27 Can you give any more specific detail of how you,  
28 if you were rewriting the law or just expressing a policy



1 perspective, how would you define the base versus the peaks and  
2 specialties?

3 MR. WOLF: Senator, first of all, thank you for  
4 your kind comments. One of the great joys of my time with the  
5 Governor's Office was the ability to interact with the Members  
6 of the Legislature. I truly enjoyed that and feel that,  
7 although many understand the administrative side of it, that  
8 particular opportunity gave me a great opportunity to see the  
9 challenges facing the Legislature, so I enjoyed it very much.

10 I don't know that I can give you a definition,  
11 but I do know that if we ever get to the point where the  
12 Director, whomever that may be, does not have the opportunity to  
13 offer career advancement, number one; some continuity of  
14 service, some certainty, number two; but even more, somewhat  
15 more ethereal, if you will, is the ability to work on good  
16 projects, because these are bright people coming out of school.  
17 If you're going to have them redesigning widgeits, they're going  
18 to find employment somewhere else. So, you have to be able to  
19 provide those three opportunities within state government.

20 To the extent that you can do that, I think  
21 you've met the goals. To the extent that you start contracting  
22 out where those three opportunities are not available, then that  
23 perhaps is detrimental.

24 I don't know that I can define it.

25 CHAIRMAN LOCKYER: That's an interesting way to  
26 frame the issue. And I would sort of emphasize the third -- all  
27 three matter, of job security, and advancement, but I would  
28 emphasize the thrill of doing grand things.

1 MR. WOLF: Creative outlet.

2 CHAIRMAN LOCKYER: People have that, or  
3 potentially have that opportunity when they build a new Bay  
4 Bridge, or some challenges of that sort that may or may not be  
5 tasks for the Caltrans workers, at least as we currently  
6 understand.

7 Before moving on, do you have any tentative  
8 conclusions as to the fiscal issue associated with this debate?  
9 Is there any convincing or compelling evidence that it would be  
10 more or less expensive to contract out or to keep it inside?

11 We've all seen studies after studies on this.  
12 Anything that you found persuasive?

13 MR. WOLF: Mr. Chairman, as you just indicated,  
14 there are any number of studies. It's sort of, which way do you  
15 want it to come down, one could almost say if someone was  
16 cynical.

17 I think if we can ever enter into a true debate,  
18 where we get all the true cost centers on the table, and we can  
19 compare apples to apples, I think we'll find that there are  
20 areas that the state can perform much better, and there are  
21 areas that, perhaps, private industry. So, if we can come to  
22 some closure on the fact that there may be a division of efforts  
23 that make some sense, then I think we can come to grips with the  
24 contracting out issue.

25 CHAIRMAN LOCKYER: It's one of my  
26 disappointments, frankly, from the beginning of my tenure as Pro  
27 Tem, I offered to try to advance this discussion and haven't had  
28 any success.

1           Mass transit, do you have any views that we  
2           should hear about those needs?

3           MR. WOLF: I think, trying to set my thoughts to  
4           the venue, mass transit is a necessary aspect of public  
5           transportation in the broadest sense. We're never going to pave  
6           enough roads.

7           Again, harkening back to the successful passage  
8           of SB 45, for the first time we will allow local decision-makers  
9           to mitigate their own land-use decisions and their own  
10          challenges by the most appropriate method. Instead of trying to  
11          force square pegs into round holes, if mass transit is the most  
12          appropriate solution to mitigate whatever's going on, then they  
13          now have the ability to do that, where, in the past, they might  
14          not have had so.

15          So, I have great hopes for mass transit under the  
16          broader envelope of SB 45 as projects come forward.

17          When I say transit, it's not just trains, but  
18          rubber-tired transit vehicles. They used to be buses, Mr.  
19          Chairman, until I got into this business. Now they're  
20          rubber-tired transit vehicles.

21          CHAIRMAN LOCKYER: I guess there is some tension,  
22          as is common when there are too few resources to meet  
23          extraordinary demands. There's tension between new construction  
24          and rehabilitation, seismic retrofit, those sort of  
25          undertakings.

26          Is there any clear priority in your mind?

27          MR. WOLF: Absolutely. Senator Ayala pointed  
28          out, quite insightfully, that the number one responsibility is



1 the protection and safety of the motoring public. That means  
2 those who are in transit vehicles as well.

3 The Commission, I think with great foresight  
4 under the leadership of our past Chairman, mandated that the  
5 Department look forward to the next seven to ten years with a  
6 greater emphasis on rehabilitation and the maintaining of the  
7 integrity of that which we have already invested in. And the  
8 goal has gone from 15,000 lane miles of deferred maintenance,  
9 down to 5,000 lane miles of deferred maintenance. That is a  
10 major investment and a paradigm shift of no small consequence,  
11 to protect the integrity of that which we have already invested  
12 in. Some of our roadways --

13 CHAIRMAN LOCKYER: Pardon me, it went from five  
14 to fifteen?

15 MR. WOLF: It went from 15 [sic] lane miles of  
16 deferred maintenance to only 5,000. That is a major increase in  
17 resources directed at rehabilitation.

18 CHAIRMAN LOCKYER: Out of how many lane miles?

19 MR. WOLF: That's almost all of them, 15,000.  
20 Almost everything in the state is in need of some kind of  
21 rehabilitation.

22 CHAIRMAN LOCKYER: They're about 15,000 --

23 MR. WOLF: Depending on how you count them.

24 CHAIRMAN LOCKYER: And they're going to do  
25 two-thirds of it or so.

26 MR. WOLF: We're going to get them back up so  
27 that we can maintain the integrity.

28 CHAIRMAN LOCKYER: Does that include seismic?

1 MR. WOLF: In addition, there's seismic work that  
2 has to be done. This is in addition to the seismic work that's  
3 scheduled.

4 CHAIRMAN LOCKYER: And you consider that part of  
5 maintenance?

6 MR. WOLF: No, I consider that as number one,  
7 safety, and then would come rehabilitation and maintenance of  
8 that which we've already invested in.

9 Only after we've met these overarching goals is  
10 there money left over for capital investment in new projects. I  
11 think that's sort of the priority.

12 CHAIRMAN LOCKYER: Got you.

13 Senator, you can conclude if there are other  
14 questions from Members.

15 SENATOR AYALA: Move the confirmation.

16 SENATOR BRULTE: Second.

17 CHAIRMAN LOCKYER: We have a motion by Senator  
18 Ayala, and Senator Brulte seconds that motion.

19 Please call the roll.

20 SECRETARY WEBB: Senator Ayala.

21 SENATOR AYALA: Aye.

22 SECRETARY WEBB: Ayala Aye. Senator Brulte.

23 SENATOR BRULTE: Aye.

24 SECRETARY WEBB: Brulte Aye. Senator Hughes.

25 SENATOR HUGHES: Aye.

26 SECRETARY WEBB: Hughes Aye. Senator Lewis.

27 SENATOR LEWIS: Aye.

28 SECRETARY WEBB: Lewis Aye. Senator Lockyer.

1 CHAIRMAN LOCKYER: Aye.

2 SECRETARY WEBB: Lockyer Aye. Five to zero.

3 CHAIRMAN LOCKYER: Thank you, sir.

4 MR. WOLF: Mr. Chairman, thank you very much for  
5 allowing me to come forward.

6 CHAIRMAN LOCKYER: Let's try to go through our  
7 confirmation issues first, and then go back to referring bills,  
8 and holidays, and so on.

9 Ms. Dronenburg is first on the list. Good  
10 afternoon. How are you today.

11 MS. DRONENBURG: Fine, thank you.

12 CHAIRMAN LOCKYER: Did you want to begin with  
13 some comments?

14 MS. DRONENBURG: I know that you got started a  
15 little bit late, and that you have a lot on your agenda.

16 CHAIRMAN LOCKYER: No, this is an important job  
17 you've got here, so let's hear from you.

18 MS. DRONENBURG: I would very much appreciate  
19 being confirmed. I think that there is little of greater  
20 importance.

21 I am Kathryn Dronenburg. I would appreciate your  
22 support of my confirmation.

23 I have enjoyed the challenges facing our children  
24 in the past seven years that I've been on the State Board of  
25 Education, and I can think of little of greater importance than  
26 trying to assure that every single child in our state has a  
27 quality education.

28 CHAIRMAN LOCKYER: We probably have some



1 questions. Let me start with a general one. That is, the  
2 institutional structure and environment.

3 Many people have made note of the fact that there  
4 seems to be occasional friction between an appointed board, the  
5 Governor that appoints them, the superintendent elected by the  
6 people.

7 Do you have any personal observations on the best  
8 way to manage these tasks in California? Any thoughts from your  
9 personal experience that would help us think about the long-term  
10 restructuring, possibly restructuring, of those institutions?

11 MS. DRONENBURG: Well, yes, I do.

12 I feel that long term, it would probably be  
13 wisest for the Governor to appoint the Board and also the  
14 Superintendent, or for all of them to be elected. I think that  
15 it is a difficult dichotomy that we have now.

16 But I do think that despite that fact, there are  
17 other states, not many, but others that do have our system.  
18 They have made it work. I believe that we are making what we do  
19 in this state work.

20 The comments that I just made are comments that  
21 the current Superintendent also has supported. People realize  
22 that people vote for a Governor, they expect a Governor to have  
23 a vehicle for implementing education policy, and he needs or she  
24 needs to have that. But when they are electing a  
25 Superintendent, they also expect that person to implement  
26 reforms that may have been discussed.

27 So, I think that it imposes a challenge under the  
28 current system when you have two sets of expectations for two

1 separate elected positions.

2 CHAIRMAN LOCKYER: So, you would sort of appoint  
3 them all or elect them all as an alternative.

4 MS. DRONENBURG: In other words, I still think  
5 there is -- I think probably if you did not have an elected  
6 Superintendent, and you are nevertheless going to have an  
7 elected Governor, the Governor must have a vehicle for  
8 implementing policy and affecting education.

9 How the position of the Superintendency is  
10 framed, and the duties that attend it, would have to be coupled  
11 with any discussion about change so that it was clear exactly  
12 why we were Instituting whatever changes.

13 CHAIRMAN LOCKYER: In the last couple of years,  
14 there's been a number of instances when commentators thought  
15 that the State Board members were drifting over into specific  
16 administrative matters, rather than establishing general  
17 policy.

18 Do you have any reaction based on your  
19 observations as to the validity or invalidity of those comments?

20 MS. DRONENBURG: Well, lacking a specific  
21 instance, just to speak to the general idea, when the court did  
22 make its decision that the State Board of Education should be  
23 setting policy, in general there was also a rough guideline that  
24 had to do with the amounts of dollars that were involved in any  
25 specific issue.

26 So, the larger issues, if you will, of policy for  
27 the whole state were to be delegated to the Board, but with  
28 respect to how those were carried out, the figure that I

1 remember was around \$10,000. Things that were less than that  
2 were to be considered discretionary, and those primarily had to  
3 do with things that would have already been identified in the  
4 budget, which would already have had a lot of scrutiny and  
5 review.

6 CHAIRMAN LOCKYER: Under ten --

7 MS. DRONENBURG: Would be discretionary at the  
8 Superintendent's level.

9 CHAIRMAN LOCKYER: -- with the Superintendent,  
10 and above that would require some Board act?

11 MS. DRONENBURG: Uh-huh.

12 CHAIRMAN LOCKYER: I guess to be maybe more  
13 specific, the issues that I heard worried about dealt with the  
14 adoption of math and English language curriculum, and the  
15 feeling that there was excessive involvement by individual Board  
16 members in developing the policy.

17 Do you have any reaction to that?

18 MS. DRONENBURG: Yes, I do; I sure do.

19 First of all, with respect to the English  
20 language arts, I worked on the tiny little subcommittee for the  
21 Board that did look at any revisions that we felt the Board  
22 should consider. And there were really very few.

23 One of the revisions we recommended I am quite  
24 proud of, and is one that has been recognized as having needed  
25 to be made. That was addition of several standards related to  
26 the fact that students really need to be able to read and write  
27 technical reports. That literature is certainly essential, and  
28 we want that for our students. Expository skills are important,



1 but that the specific skills of technical writing needed to be  
2 added, so we did do that.

3 My understanding is that the vast majority of  
4 Standards Commission members are pleased with the ultimate  
5 result of what the Board did with the English language arts  
6 standards. So that then brings us to the mathematics standards.

7 CHAIRMAN LOCKYER: Was the Standards Commission  
8 helpful and satisfied with the outcome in that instance?

9 MS. DRONENBURG: That's what I'm given to  
10 understand, yes.

11 Then with respect to mathematics, I think it's  
12 important to divide that into the kindergarten through seventh  
13 grade set of standards, and then the eighth grade through  
14 twelfth grade standard.

15 With respect to the kindergarten through seventh  
16 grade standards, it is my understanding that our ultimate  
17 adoption of those satisfied pretty much every one. There had  
18 been some misunderstandings at first because of the fact that  
19 the Board was very mindful of the fact, and in fact, the  
20 Standards Commission staff itself made clear to us when we went  
21 through the process in the English language art standards  
22 development, that it was crucial that standards be measureable,  
23 that they be assessible. That's what the legislation said. And  
24 there were some verbs in those standards that were along the  
25 lines of create.

26 Well, you can't assess that kind of a thing, so  
27 we did change some of the language.

28 But another thing that we're alleged to have done

1 sometimes in the press, namely to eliminate the skill of  
2 estimation, is just not true. We thought it was very important,  
3 but we just put that all together rather than having it as a  
4 verb in a number of standards. We consolidated that.

5 With respect to that kind of thing, I think, is  
6 why we ultimately didn't seem to have a disagreement over the  
7 kindergarten through seventh grade standards.

8 That brings us then to the high school standards,  
9 including eighth grade. There the major dilemma was over two  
10 issues. First of all, all of the standards as they originally  
11 had come had included with them examples. There had been no  
12 examples with the English language arts standards, and it was  
13 our feeling as a Board that while we understood the fervor of  
14 Standards Commission members wanting to really get their point  
15 across, we as Board members nevertheless realize that the  
16 standards, while extremely important, are only one piece of the  
17 puzzle that goes out to local school districts.

18 Another extremely important piece of that puzzle  
19 is the mathematics framework. And in any subject matter, the  
20 framework. We felt that that is the more appropriate place to  
21 be discussing education strategy and examples, and how to teach  
22 the standards. That the standards are to be content that is to  
23 be mastered by the students.

24 So, the first thing that we did that seemed to be  
25 controversial was to remove the examples, which -- there had  
26 been no examples with English language arts.

27 The second thing we did was face a dilemma with  
28 respect to the formatting of the standards. You may be aware

1 that there is a split among mathematicians and educators, and  
2 now many parents, with respect to how best to teach  
3 mathematics. And the two essential points of view are that what  
4 you teach children should be integrated, or -- and that's the  
5 newer, more innovative way -- or should be in a traditional  
6 approach where you teach all of algebra, then the next year all  
7 of geometry, and so forth.

8           The way that the standards arrived for us from  
9 the Standards Commission was an integrated approach. That was  
10 the formatting of them.

11           The problem for the Board is that although we  
12 asked for, we never did receive, and in fact we were told that  
13 there is no research -- current, confirmed, replicable research  
14 -- to push that strategy as more effective than the traditional  
15 strategy. Every place we have looked, we have come up with the  
16 fact that there is no research to push one strategy over the  
17 other.

18           So, not only did we not want to push that  
19 strategy of the integration, neither did we want to push a  
20 strategy that was traditional in approach.

21           The format that came to us, as I said, was an  
22 integrated approach. If we had identified all of those  
23 standards and formatted them in the way most courses are taught  
24 in high schools now, we would have been rightly accused of  
25 favoring the traditional approach or strategy. So, what to do.

26           What we decided to do was to format the content  
27 of those standards in a disciplined approach and basically say,  
28 when children learn algebra, these are all of the elements they



1 must cover. When they're learning geometry, these are all of  
2 the elements that must be covered, and trigonometry and so  
3 forth.

4 That gives the latitude to every single district  
5 in our state to say, if we want to use the integrated approach,  
6 we will take as many of the algebra standards, and as many of  
7 the geometry standards as we wish for a given year, and we will  
8 cover those. Ultimately, our children will have covered all of  
9 the things.

10 If we choose to do the traditional approach, then  
11 we'll do all of the geometry in the ninth grade, or rather, the  
12 tenth grade.

13 That latitude is there because of our decision to  
14 follow that different format. Following that format of a  
15 disciplined approach, though, made the standards look different  
16 than when they came to us. And I think that that is the heart  
17 of the some of the concern that's been expressed, and that is  
18 the reason, from my point of view, why we did what we did.

19 CHAIRMAN LOCKYER: Other questions on this  
20 issue? Anything else? Senator Brulte.

21 SENATOR BRULTE: Last year, the Legislature  
22 enacted and passed legislation, I believe it was AB 602 on  
23 special education. Did you play a role in that at all?

24 MS. DRONENBURG: Yes, I did. I was very pleased  
25 when that legislation was passed.

26 I believe very strongly that -- and because I  
27 have a child who is disabled, I understand that the needs of  
28 children with disabilities are so different, one from the other,

1 it is extremely difficult to categorize them. And the previous  
2 funding model, while a big improvement over funding models  
3 before it, nevertheless forced districts to create programs and  
4 then try to put children into those programs.

5 The new model, if we're diligent and careful with  
6 it, I believe will really give us a chance to meet the  
7 individual needs of students. That, to me, is the whole point  
8 of a quality education for those students.

9 CHAIRMAN LOCKYER: Are there other questions from  
10 Members of the Committee? Senator Hughes, please.

11 SENATOR HUGHES: I understand, Ms. Dronenburg,  
12 that Delaine Eastin issued a memorandum regarding certain things  
13 that were going to be implemented or discontinued under  
14 Proposition 209.

15 How do you feel about this laundry list of  
16 programs that she sent you that you needed to look at? How did  
17 you feel about her communication?

18 MS. DRONENBURG: Could you refresh my memory? I  
19 don't have that in front of me.

20 SENATOR HUGHES: Well, after the passage of 209,  
21 the Superintendent issued a memo to the districts and to the  
22 county superintendents informing them about the measure,  
23 indicating that the measure's legal question still needed to be  
24 clarified. And listed among those were a group of programs.  
25 It's a whole laundry list of programs. I don't want to go  
26 through every one of them, but this is an example of some of the  
27 things that she talked about that might be in jeopardy under  
28 209.

1                   One was Indian Center, Indian Education Centers,  
2 Latino Heritage Resource Centers, Social Tolerance Resource  
3 Centers, Single Gender Academies Pilot Programs, the MESA  
4 Program, the school district's affirmative action employment  
5 programs, employees advisory groups based on sex, race,  
6 ethnicity, and national origin.

7                   How did you feel when all of these lists of  
8 programs were listed as being in jeopardy or under question  
9 under the implementation of 209? That's just an example of this  
10 laundry list of things that was indicated in the memo.

11                  MS. DRONENBURG: Well, my basic recollection of  
12 that whole period of time was, first of all, that we were going  
13 to have to deal with the change. We were going to have to deal  
14 with what the courts were going to say about that change  
15 because we knew there would be court challenges.

16                  But I think what you're getting at is with  
17 respect to her particular actions to try to deal with the  
18 issue. That is how I saw what she was trying to do, was do what  
19 she felt was a way of informing people of things that she  
20 thought really might have been in jeopardy.

21                  My feeling in general on those kinds of things is  
22 that alerting people to fear is a very -- it's a very serious  
23 thing to do. You need to couple that also with the fact that  
24 there may be ways to preserve those programs. In other words,  
25 not to cause people to be fearful without giving them avenues  
26 for solving problems.

27                  This was also sufficiently long ago that it was  
28 before the State Board of Education had in place its staff,



1 which we now have in place. And it has taken a year-and-a-half  
2 for us to get our tiny little staff in addition to the  
3 Department serving as our staff.

4 One of the advantages to our having a staff,  
5 given that the court has said that the Board is changed with  
6 policy making, is that it gives a chance for the Superintendent,  
7 and the Board, and Board's staff to discuss a lot of these  
8 things, and to look at the ramifications of communiques that go  
9 out, to clarify from whom they're coming, and exactly what it  
10 means to a district when it gets that kind of information, what  
11 is it supposed to do about it, and what might all of the  
12 alternatives be.

13 SENATOR HUGHES: As a consequence to that  
14 memorandum, she formed -- this is Superintendent Eastin -- a  
15 task force that was going to address itself to these issues and  
16 report back in 30 days.

17 Have you gotten any update on what that 30-day  
18 report was? Maybe it's unfair for me to ask you that question,  
19 but I'm really curious as to what the Board has learned about  
20 the work that was being done, and delighted to know that your  
21 staff and the Superintendent's staff is working together.

22 MS. DRONENBURG: I can appreciate you wanting to  
23 know about that. We do have staff from our board here. They  
24 have assured me that any questions any of you ask that I was  
25 unable to answer, they would get information for me to give to  
26 you, or give directly to you, so that you can be fully aware of  
27 all of that.

28 SENATOR HUGHES: I'd like to know what progress

1 has been made, if any, in that regard, because you did make a  
2 statement about, you know, it's kind of frightening to find out  
3 that all of these programs might be in jeopardy. It really  
4 concerns me, and I'd like to know what is highest on your  
5 priority list, or lowest on your priority list for eradicating  
6 things like this. That's what I'm really aiming at.

7 MR. LUCIA: Senator, my name is Bill Lucia, the  
8 Executive Director of the State Board.

9 My understanding is that the current status of  
10 that effort has been shifted to the legal office of the  
11 Department under the direction of Delaine Eastin, the State  
12 Superintendent. And that they're re-reviewing that list, if you  
13 will, to determine, based on the latest decision with  
14 Proposition 209, in terms of what really truly would be in  
15 jeopardy.

16 It's not a clearcut case, in fact, that any  
17 particular one of those programs are in fact in jeopardy. I  
18 understand not only is the Superintendent yet to develop her own  
19 list based on her legal office's work, but that they have not  
20 yet approached the Board's staff and the Board's staff counsel  
21 as to whether or not they believe that any of those programs are  
22 clearly in jeopardy on their face.

23 As you know, any of the programs that are listed  
24 on that chart that have to do with existing litigation or  
25 consent decrees are actually explicitly precluded from being  
26 subject to the direct constitutional requirements of Proposition  
27 209.

28 SENATOR HUGHES: So, those programs are probably



1 less in jeopardy because the legal question is still out on  
2 those.

3 MR. LUCIA: That's a fair enough statement to  
4 say, yes.

5 SENATOR HUGHES: In the case of Proposition 209,  
6 I'd like to know what you feel, Ms. Dronenburg, about the role  
7 of the State Board of Education should be in regard to the  
8 Governor's list of suspect education statutes issued last  
9 September?

10 MS. DRONENBURG: Suspect education list?

11 SENATOR HUGHES: Statues issued last September.  
12 Do you know what they are?

13 MS. DRONENBURG: No, I don't.

14 SENATOR HUGHES: Are you going to find out what  
15 they are and let me know? I'd really be curious to know what  
16 suspect list this is. I have no idea.

17 MS. DRONENBURG: Nor do I, but I will try to find  
18 out.

19 SENATOR HUGHES: What do you feel the role of the  
20 State Board of Education is with public higher education  
21 segments in helping students to prepare for admission to higher  
22 education? Do you think that the State Board has a role?

23 If they don't have a role, should they have a  
24 role? How do you feel about that?

25 MS. DRONENBURG: I think it's incredibly  
26 important that when a child leaves the K-12 system, that that  
27 child be ready, capable of attending a higher education, whether  
28 it's a community college first, or the California State system,

1 or the University system.

2 In fact, that was the premise for me and, I  
3 believe, many others in looking at the standards, that we start  
4 at what will be needed for a student, and then working  
5 backwards, okay, if that's what is going to be needed when a  
6 child leaves grade twelve, then we had better be doing such and  
7 such in eleventh grade, and then that requires such and such in  
8 tenth grade, all the way down to kindergarten.

9 SENATOR HUGHES: How does your Board view the  
10 recommendations from the higher education segment to raise the  
11 high school graduation requirements? How do you feel about  
12 that?

13 MS. DRONENBURG: The first thing that we need to  
14 do is make sure that children are achieving, all children are  
15 achieving the standards we have in place now. And what that  
16 means at the high school level is really not terribly, terribly  
17 rigorous. That would mean that all children achieve algebra at  
18 the first year level. That is do-able. We know that 75 percent  
19 of children who do that can go on to higher education. If we  
20 can do that, and I believe with all my heart that we can,  
21 especially if we start with kindergarten, there is no child,  
22 save the one-and-a-half percent who are severely disabled, who  
23 cannot meet that.

24 Then we need to ratchet up, and we will be able  
25 to have all children achieving algebra two. After that, I think  
26 it is discretionary on the part of the students whether or not  
27 and how far they want to go.

28 But I think we need to make sure that children

1 are achieving at that level, then we ratchet up, after we know  
2 how to do that, and we have children progressing through the  
3 system, and we have brought all things to bear to assure that  
4 they achieve that.

5 Our children in California are every bit as  
6 bright as other places in the world, and other places in the  
7 world do achieve that level. Our students can.

8 SENATOR HUGHES: So, we have to begin, what I  
9 hear you saying, with a thrust at an earlier grade level, a  
10 younger age, and not panic when our students get to junior high  
11 school, and they want to qualify to get into a fine university  
12 system.

13 MS. DRONENBURG: There has to be a phase in. It  
14 is not going to be realistic or fair to either the students, the  
15 parents, or the teachers if next September, we're going to  
16 suddenly have all of the requirements for tenth graders be in  
17 place for ninth graders who have not had any of this  
18 preparation.

19 SENATOR HUGHES: So, you would say that any  
20 changes that we make in this regard have to be done in the lower  
21 grades first, and you could not just, without discretion, go and  
22 raise standards on upper grade levels. Is that what you're  
23 saying?

24 MS. DRONENBURG: Yes.

25 SENATOR HUGHES: Thank you.

26 MS. DRONENBURG: You're welcome.

27 CHAIRMAN LOCKYER: We're engaging in a little  
28 side bar here about who the heck needs algebra. Now, that's not

1 my opinion, being elected by algebra teachers, probably, among  
2 others, but it is an interesting question.

3 MS. DRONENBURG: I'd like to answer that.

4 CHAIRMAN LOCKYER: Yes, why don't you tell us  
5 what your view are?

6 MS. DRONENBURG: I think that algebra is not just  
7 numbers that are unassociated with real living.

8 From my perspective, and I come from a family of  
9 three girls, and I have three daughters, one of whom is a  
10 structural engineer, my belief is that algebra is part of the  
11 mathematics that teaches you how to think. It teaches you to be  
12 logical; teaches you to break down problems into manageable  
13 bits. And I think it is every bit as important being able to  
14 articulate.

15 We would never say that you don't have to be  
16 literate, both with respect to what you read and with what you  
17 say, that you be able to speak well, but that also you have to  
18 be able to be logical, and you have to be able to break things  
19 down into manageable problems. I do think that's what algebra  
20 teaches you to do.

21 CHAIRMAN LOCKYER: Certainly those are factors.  
22 There may be other disciplines that teach the same thing.

23 Frankly, it's what law school does to most  
24 lawyers, not all. It's the same idea in terms of desired  
25 outcomes.

26 I happen to love math. So for me, it's almost  
27 like art. And I view it in a way that is exciting.

28 However, the gap between teaching practices and



1 the potential inspiration and learning experience that comes  
2 from math may be the greatest of any of the disciplines. At  
3 least my experience was, they couldn't have done more to try to  
4 turn kids off about math than the gym teacher I had teaching my  
5 geometry class.

6 I missed hearing whether Senator Hughes had an  
7 opportunity to ask about educational services for undocumented  
8 students. Did you get to that? Perhaps you might. This is an  
9 ongoing issue in the state.

10 We just hear nice things from people, and  
11 sometimes we learn from your personal experience in developing  
12 the English language curriculum, or whatever, and that's  
13 worthwhile, but unless we ask kind of the tough ones, we don't  
14 get a real picture of how people work through these competing  
15 philosophies.

16 Let me just ask if you've had occasion to express  
17 views about state funding for schooling for undocumented  
18 students?

19 MS. DRONENBURG: It's my understanding that the  
20 law is clear that when children come to school, those children  
21 are to be educated. We have nothing to gain by not making sure  
22 that every single child who lives in our community is well  
23 educated.

24 That's my personal view. I'm not aware that the  
25 Board has taken an official position on that, but that is how we  
26 operate. We believe we are entrusted with the education of all  
27 of the students in the State of the California.

28 CHAIRMAN LOCKYER: Actually, our analysis



1 indicates that there was one Board action. It was 1993.

2 MS. DRONENBURG: I was on the Board then.

3 CHAIRMAN LOCKYER: There was a Board discussion  
4 of Assembly Bill 149 by Assemblymember Mountjoy. It would have  
5 prohibited state funds from being used for immigrants,  
6 undocumented immigrants.

7 The Board took a position supporting the concept,  
8 but expressing concern about its implementation.

9 Does that ring any bell at all?

10 MS. DRONENBURG: I was not on the Legislation  
11 Committee, and so --

12 CHAIRMAN LOCKYER: What do you see? Does a  
13 report come through to you that's kind of a consent calendar  
14 kind of thing?

15 MS. DRONENBURG: That is the way, in that year,  
16 I'm quite clear, I know that's what happened because then there  
17 was subsequently another action where we all were very upset  
18 with what we found out we had voted on, so we have changed the  
19 process since then. But it was essentially a list of, this  
20 committee recommends such and such.

21 CHAIRMAN LOCKYER: It tended to move fast.

22 Are there other questions? Is there anyone  
23 present that wishes to comment, or other questions from Members  
24 of the Committee?

25 SENATOR LEWIS: My recollection is that you were  
26 an opponent of Proposition 174, the voucher initiative?

27 MS. DRONENBURG: That's right.

28 SENATOR LEWIS: I just wanted to ask your opinion

1 on the efficacy of charter schools, and whether or not you favor  
2 a general expansion of these in California?

3 MS. DRONENBURG: I do think that's one of the  
4 opportunities to learn about better ways to do things. The  
5 reason for having people explore vouchers is, they want to  
6 assure that more kids have a quality education. I understand  
7 that.

8 The chance to see something different, given all  
9 of the rules that we have to follow, is pretty rare. And I  
10 think it was wise of the Legislature to expand that to give us a  
11 chance to look and see what some other ways to do things will  
12 be.

13 Right now, staff was just telling me, I think we  
14 have 133 that have been authorized now, and 90 or so are up and  
15 running.

16 To me, the most important part of the charter  
17 schools will be to look at what they claimed they were going to  
18 do, then did they achieve that. If they did, have they been  
19 careful to say how they did it so that another school or  
20 district can replicate it.

21 My fear about charter schools is that when they  
22 begin, there will be a lot of very happy and excited people, and  
23 their enthusiasm is what's going to carry the day, and not the  
24 practices themselves. And to me, the real value will be  
25 replicable practices that we can share up and down the state.

26 SENATOR HUGHES: Currently there is a cap of a  
27 hundred. And then school districts can make exceptions for the  
28 additional, you said it's 130 -- State Board can make these

1 exceptions. Now you're up to 130?

2 MS. DRONENBURG: One hundred and thirty-three  
3 have been numbered.

4 SENATOR HUGHES: On what basis did you make these  
5 33 exceptions to the cap? What did you find out that was so  
6 exceptional and so good that you wanted to extend it to another  
7 33?

8 MS. DRONENBURG: It was more a matter of the  
9 reverse.

10 We felt like that our understanding was that the  
11 Legislature was in favor of this. We were not aware of any  
12 people in the educational communities who were opposed to an  
13 extension of the numbers.

14 The Department's recommendation to us was to  
15 approve them. And because they seemed to put forth the same  
16 kinds of new ideas that the others had done, it was our feeling  
17 that there was nothing magical about the 100, given that the  
18 reception and the reaction to the whole idea in the state of  
19 over 1,000 districts was not huge when it was only 33.

20 SENATOR HUGHES: Now that we have 133, have we  
21 had an evaluation, or anything that made you decide to increase  
22 the number? And what was in that evaluation that urged you to  
23 make this decision?

24 What I'm getting at is, there was something  
25 different going on in these charter schools that maybe ordinary  
26 schools should be doing, too, if that something different made  
27 students more successful.

28 MS. DRONENBURG: The legislation, it's my

1 understanding, that created the opportunity for charter schools  
2 was a five-year -- five years would pass before the evaluation  
3 would occur. So, that isn't finished yet, that five years  
4 hasn't been completed yet.

5 SENATOR HUGHES: When will the five years be up?

6 MS. DRONENBURG: We're getting close to it.

7 MR. LUCIA: There has been an interim evaluation  
8 just completed, and it was funded by the Legislature.

9 SENATOR HUGHES: And what did that evaluation  
10 tell us? Have you seen it?

11 MS. DRONENBURG: No, I've been immersed in  
12 standards.

13 MR. LUCIA: Just very briefly, Bill Lucia again,  
14 the Executive Director with the Board.

15 The Legislative Analyst's Office coordinated an  
16 evaluation study that was an interim approach proposed by  
17 Assemblywoman Mazzoni as an attempt to try and answer some of  
18 the doubting Thomases in terms --

19 CHAIRMAN LOCKYER: What did you learn?

20 MR. LUCIA: On balance, the charters were meeting  
21 their goals as stated in the charter contract, if you will,  
22 between the parents and the teachers of the charter school, and  
23 the authorizing parent district.

24 The most important thing that I gleaned from it  
25 that I believe the Legislature really does need to wrestle with  
26 as it contemplates the expansion of the charter approach is the  
27 issue of liability associated with direct funding.

28 Right now, while the law on the one hand requires



1 that the money go directly to the charter school site itself, in  
2 practice what happens is, the money goes from the  
3 Superintendent's Office, State Superintendent, as it does for  
4 all schools, to the district first, and then from the district  
5 to the school site. And there's been quite a bit of concern  
6 about the fiduciary responsibility and the capability where, in  
7 many school site operations in the general population, you have  
8 expertise in terms of accounting and auditing functions, and  
9 those sorts of things.

10 CHAIRMAN LOCKYER: That they wouldn't have at the  
11 school site.

12 MR. LUCIA: Exactly. So, that's something that I  
13 believe is really top on the agenda for the Legislature to  
14 consider.

15 On balance, the legislation asked whether or not  
16 the approach should be continued or discontinued. So, it  
17 actually asked up or down, should this thing be stopped.

18 I think if you read the report that it's pretty  
19 clear that it should not be stopped, that it has actually found  
20 some interesting things with respect to the demographics of the  
21 kids, that on balance they do reflect a broad section of  
22 California. In some cases, they actually have an excessive  
23 amount, if you will, of kids with special needs, or at-risk  
24 kids.

25 So, there have been some communities that have  
26 really brought together and used this approach as an opportunity  
27 for the challenge of dealing with either kids in special  
28 education programs that have particular needs, or kids that are



1 otherwise at risk in certain subject matter areas where they can  
2 spend some additional remediation on literacy, for example, and  
3 that becomes a big focus of the charter.

4 And it does depend on whether it's an elementary  
5 charter or a secondary level charter in terms of the composition  
6 of the classroom.

7 SENATOR HUGHES: Out of those schools, the  
8 charter schools that were elementary chartered connected with  
9 universities, did those charter schools fare any better than the  
10 free-standing charter schools just within a district, floating  
11 somewhere?

12 MR. LUCIA: I don't know the answer to that  
13 question. I know the charter specifically that you're thinking  
14 of. I don't know in terms of student achievement whether or not  
15 that was answered by the study.

16 I haven't had a chance myself to go through all  
17 the reams of data that were associated with the report. It just  
18 came out a few weeks ago. But I'd be happy to glean that and  
19 see if that's available.

20 SENATOR HUGHES: I'd like to find out about that,  
21 because then you have the university and professors in the  
22 universities researching that, looking at that. And I think  
23 that information could be so helpful to us.

24 It's like, you know, I think in a way like a  
25 franchise, and all the quality of all franchises are not the  
26 same. But the people who invent and start the franchises want  
27 them all to live up to the same standards.

28 So, the same thing, I think, is true of our

1 charter schools. The charter schools are doing a fine job, and  
2 I wonder if those charters connected with universities do  
3 better. I think they do, but I'm not sure they do.

4 MR. LUCIA: Intuitively, that's certainly  
5 plausible. In fact, in some states that's a requirement in  
6 terms of to be able to get your charter status.

7 The one thing we do know, if it's not in the  
8 report, that this spring, with the standardized tests that will  
9 be administered to all children, including those in charter  
10 schools, will help ferret out that answer by the end of the  
11 spring.

12 So, if it's not in the report -- if it is in the  
13 report, we'll get it to you, Senator. If not, we will wait  
14 until the spring and answer your question then as well.

15 CHAIRMAN LOCKYER: If I can impose on your time  
16 in this way a minute more, are either of you aware of like the  
17 exemplary success of a particular charter school program that  
18 you'd like us to know about, or maybe one that, so far, hasn't  
19 been successful but we're still hopeful? Anything on either end  
20 of the evaluative spectrum that comes to mind?

21 MR. LUCIA: If I may, the one that comes to mind  
22 on the exemplary end of things is one here locally in Senator  
23 Greene's district, in the North Natomas area, where they were  
24 not -- it's not exemplary from the standpoint of the scale of  
25 the state as a whole, but in terms of what that school site  
26 looked like prior to becoming a charter and where they are now.

27 CHAIRMAN LOCKYER: Is this elementary?

28 MR. LUCIA: Yes, and where they believe they are

1 in terms of longitudinal information on their standardized  
2 tests. They have found that to be successful.

3 There's also instances in terms of the charter  
4 law, and the safeguards that the Legislature did put in place,  
5 on the other end of the spectrum. I think it is important to  
6 note that there have been some fiduciary failures.

7 That's why, on the one hand, the number is 133  
8 that were authorized in terms of the label that you attach to  
9 the school, but I think it's important for the Legislature to  
10 know that even now, under the rubric of where people believe  
11 that the cap has been exceeded, there are in fact now only 90  
12 charter schools operational to district charters.

13 There have been some that have been shut down.  
14 There are others that were going to start up school and ring the  
15 bell on opening day, and they realized that they didn't have the  
16 adequate facility needs for the Health and Safety Code  
17 requirements, and those types of things.

18 So, on that end of the spectrum, there have been  
19 some fits and starts along the way, and there have been an  
20 absolute shutdown in the Los Angeles area, where there was, to  
21 be kind, probably a poor accounting of public money.

22 CHAIRMAN LOCKYER: Any examples come to mind?

23 MS. DRONENBURG: No, I was unfortunately thinking  
24 of the sad end.

25 CHAIRMAN LOCKYER: Senator Ayala.

26 SENATOR AYALA: School districts never lose their  
27 responsibility of educating their children in that district.

28 Do they lose any of that responsibility when they



1 allow charter schools to be initiated within the district? I  
2 would think not, but I don't know. Is there an oversight way  
3 of determining that the school district still has the  
4 responsibility through the charter schools to educate the  
5 children.

6 I know of a school district where the Board of  
7 Education has said, it's not our problem; it's over there;  
8 they're handling that portion of it.

9 Is that true, that they have no responsibility in  
10 terms of the education of those children, even though they may  
11 be charter schools?

12 MR. LUCIA: No, that's not true. Your question  
13 dovetails into this question that I believe has been revealed by  
14 the charter school study, in that in some cases, some districts  
15 have said that since this money relationship is ambiguous in  
16 terms of the flow of money and the apportionment that goes out,  
17 and what other responsibilities may or may not follow, I think  
18 that it would be wise to have the Legislature consider  
19 clarifying that and also even ensuring where the  
20 responsibilities lie with respect to the authorizing district  
21 and the school site itself.

22 SENATOR AYALA: Under current law that's not  
23 defined?

24 MR. LUCIA: I believe that it is if you look at  
25 the marriage of the statutes and the general purposes of the  
26 responsibility of a district, as well as the State  
27 Superintendent, and from a fiduciary standpoint, and the State  
28 Board of Education, obviously, but also County Offices of

1 Education from the standpoint of fiscal accountability. There's  
2 a role from the standpoint of the money side.

3 SENATOR AYALA: That was my understanding when  
4 the law went through the Legislature.

5 I know of a school district, according to the  
6 newspaper reports that said, hey, you're over there; you're  
7 handling it; don't worry about it; we don't care.

8 I would think that that is wrong, in my opinion.  
9 I don't think they lose any responsibility just because charter  
10 schools are created in a district.

11 My question is, is there any oversight to make  
12 sure that doesn't occur? The board has said, hey, look, it's  
13 not our problem; it's your problem.

14 MS. DRONENBURG: It's my understanding that that  
15 is the responsibility of that local board. When that local  
16 board approves the plan for that charter to be created, they, by  
17 approving the plan, are saying that they think that charter can  
18 succeed.

19 You're right, in my view. They don't lose  
20 control.

21 In fact, though, that leads to the concern I have  
22 with respect to two of the charters which are district-wide. I  
23 don't think it's been clarified whether or not the State Board  
24 of Education becomes responsible --

25 SENATOR AYALA: I'm not talking about the State  
26 Board. I'm talking about a local board.

27 MS. DRONENBURG: I understand, but I'm saying  
28 it's the same kind of a thing. If you have in a local district



1 the local board responsible for a charter within its school,  
2 which I believe that is the case, then what happens when -- and  
3 in two cases it is the case where an entire district becomes a  
4 charter.

5 Who then is responsible? Law says that the State  
6 Board of Education is. Does that mean we're fiduciarily  
7 responsible? That has not been discussed or clarified.

8 SENATOR AYALA: I don't know how often this  
9 happens, but it has happened where the local boards have said,  
10 no, they're over there; don't bother us with that; good  
11 riddance, sort of. I think it's wrong.

12 MS. DRONENBURG: That is wrong.

13 CHAIRMAN LOCKYER: What are the two? Do you  
14 recall?

15 MS. DRONENBURG: One is in Fresno.

16 MR. LUCIA: Mr. Chairman, I don't know off the  
17 top of my head. One's in the Fresno area, I believe, and  
18 another is a small school district where it's one-site school  
19 that constitutes a school district.

20 CHAIRMAN LOCKYER: So, they're both small.

21 MR. LUCIA: Yes.

22 CHAIRMAN LOCKYER: Other questions? Anyone  
23 present that wishes to comment?

24 SENATOR LEWIS: Move confirmation.

25 CHAIRMAN LOCKYER: We have motion to confirm.

26 May I record the four of us present as voting  
27 Aye? That'll be the order. Thank you for your fine work and  
28 keep it up --

1 MS. DRONENBURG: Thank you very much.

2 [Thereafter, SENATOR BRULTE  
3 returned to Committee and  
4 added his Aye vote, making  
5 the final vote 5-0 for  
6 confirmation.]

7 CHAIRMAN LOCKYER: We have Mr. Duplissea. Good  
8 afternoon.

9 MR. DUPLISSEA: Good afternoon.

10 CHAIRMAN LOCKYER: Well, I'm looking at this long  
11 list of prior employment, running back to the Dallas Cowboys.

12 What's the matter? Can't you keep a job?

13 MR. DUPLISSEA: I'm looking for a team that's  
14 look for a 47-year-old lineman actually right now.

15 CHAIRMAN LOCKYER: Do you want to start with any  
16 comment, Bill?

17 MR. DUPLISSEA: Certainly.

18 Mr. Chairman and Members, I want to thank you for  
19 giving me the opportunity to come before you again as I did four  
20 years ago to ask for your -- my distinguished Senator wanted to  
21 actually introduce me.

22 CHAIRMAN LOCKYER: The wolf is at the door. No,  
23 he left. Now Senator, do you want to open here?

24 SENATOR KOPP: Yes, I'd like to if I could, Mr.  
25 Chairman and Members.

26 I appear to commend Mr. Duplissea to you. I  
27 don't think I need spend any time, nor should I, with respect to  
28 your own personal knowledge of him.

1                   CHAIRMAN LOCKYER: I always thought you were a  
2 49ers fan. This guy worked for the Dallas Cowboys.

3                   SENATOR KOPP: I was and still am. I was there  
4 Saturday. It was quite enjoyable.

5                   CHAIRMAN LOCKYER: It was 25 years ago, too.

6                   SENATOR KOPP: I knew him when he was such a  
7 klutz that he broke his leg playing basketball.

8                   He has, however, cured himself of that kind of  
9 Walter Mitty-like quality and is now a hard-working and  
10 certainly sincere and knowledgeable exponent and executor of  
11 policies and responsibilities of OSHA.

12                   He has a business background which you're  
13 certainly generally familiar with, and he has a background of  
14 knowledge and experience with the legislative process, and now  
15 for several years in the executive branch of government with  
16 administrative experience.

17                   He has always been forthright, and he has been  
18 fastidious just in terms of personal relationships and providing  
19 information and opinions to Members of the Legislature and  
20 throughout the community at large. And even though I don't  
21 represent San Carlos as such, the boundary of the district is  
22 close enough so that I know of his reputation in San Mateo  
23 County, and it's a reputation of truth and veracity, which is  
24 important.

25                   In fact, I think it's quintessential because  
26 there's always the inevitable tension between the Legislature  
27 and the executive branch of government. And OSHA is certainly a  
28 significant issue in the administration of the act itself, and

1 those regulatory responsibilities is extremely important to  
2 California, to the Legislature as the people's representatives.

3 And Bill Duplissea does an outstanding job in  
4 those respects. I'm pleased to introduce him as it is, and  
5 also again to commend him for your recommendation. Thanks.

6 MR. DUPLISSEA: Thank you.

7 CHAIRMAN LOCKYER: Thank you, Senator.

8 Go ahead. You wanted to conclude your comment,  
9 Bill.

10 MR. DUPLISSEA: Actually, I know the hour's  
11 getting late. I just wanted to again, by way of really an  
12 update for the last four years.

13 I'm actually quite excited about the OSHA Appeals  
14 Board. It has helped me make the transition from one involved  
15 in public policy to a judicial board which is very judicial in  
16 its nature. But we've made some very exciting changes in the  
17 last -- really about the last year-and-a-half, I would say,  
18 would be the time period with my fellow members, Bryan Carver,  
19 who's the labor member, and our Chairman Jim Gazdecki, whom this  
20 committee confirmed not too very long ago.

21 And as in the area of outreach, each of your  
22 offices and many of you individually as Legislators, each Member  
23 of the Legislature has been contacted within last year  
24 specifically to inform you of what the Board does, what our  
25 function is, how it can be of help and service to your  
26 constituents. Some of your offices have taken us at our offer  
27 to give an expanded rendition of what we do.

28 And to make it a little bit more visible to our



1 constituency, our clientelle, however you choose to refer to it  
2 as, and that prompted us to take a survey last year where we  
3 came -- we took one month in the prior year, which would have  
4 been 1996, in November, took every -- polled all of the  
5 employers who had appeals before us. Also polled all of the  
6 personnel from the Division, which of course acts as the  
7 prosecutorial part of the adversarial proceedings, some very  
8 simple questions.

9 And the results of the survey came back very  
10 favorable. Without exception, every person responding indicated  
11 that the administrative law judge who handled the appeal did so  
12 in a professional manner, which certainly was one of our  
13 concerns. Over 90 percent of those responding indicated that  
14 they, even if they had disagreed with the outcome, that they  
15 received a fair, impartial, and intelligent consideration of  
16 their appeal.

17 All but two that responded found our letters,  
18 forms, notices that had been sent to them by the Board were  
19 written in satisfactory or even -- with even superior clarity in  
20 terms of clarifying the appeals process.

21 It did point up, however, the survey, a problem  
22 that we have spent basically the last year-and-a-half  
23 addressing, and that is the tremendous backlog that had existed  
24 in the Board. I'm happy to report that there's been a 400 --  
25 slightly over 400 percent decrease in the turn-around time  
26 compared to the prior years of appeals.

27 The three-member Board, which is what this  
28 committee deals with principally, which is the appeal beyond the



1 administrative law judge level, deals in decisions after  
2 reconsiderations, are called DARs. And by making that 400  
3 percent improvement, we've taken the time, which unfortunately  
4 and, I suppose, shamefully in the last many years, has sometimes  
5 been a nine, ten, eleven month process, down to something  
6 slightly over 30 days. And that's been done, certainly aided  
7 by our rather expensive office, automation, a lot of systematic  
8 changes, and really some good, old-fashioned management, some  
9 hard-ball as far as work product is concerned.

10 I've been very proud to serve on the Board, and  
11 there's a lot of ideas that we're working with now that I would  
12 like an opportunity to continue with. That's why I would ask  
13 that you suggest to the full Senate that I be confirmed.

14 I think I have somewhat of a unique background.  
15 I bring a unique set of circumstances, and a unique background  
16 to the Board, being both a former laborer -- and I don't  
17 specifically refer to my football career in that, although it  
18 could be characterized as such -- also as a small business  
19 owner, and obviously as a Legislator who has dealt in various  
20 issues that, of course, do impact directly or indirectly with  
21 the Department of Industrial Relations and specifically the OSHA  
22 Appeals Board.

23 With that, I would ask that you recommend to the  
24 full Senate --

25 CHAIRMAN LOCKYER: I'd add, it's apparent you've  
26 been taking elocution lessons from Senator Kopp.

27 [Laughter.]

28 MR. DUPLISSEA: Isn't it amazing how that

1 happens.

2 CHAIRMAN LOCKYER: It rubs off.

3 SENATOR KOPP: I noticed, Mr. Chairman, if I may,  
4 in describing the form, the response on the survey to the forms.  
5 He described it in these words, that the forms appeared to be of  
6 superior clarity, rather than saying that the customers could  
7 understand them.

8 [Laughter.]

9 CHAIRMAN LOCKYER: You've made my point.

10 Senator Hughes.

11 SENATOR HUGHES: Mr. Duplissea, we'll forgive you  
12 for that. Sometimes we follow role models that we should, and  
13 sometimes we follow role models that we shouldn't.

14 [Laughter.]

15 SENATOR HUGHES: But you didn't do too bad.

16 We've received several complaints that the level  
17 of fines have been decreasing, and the Appeals Board reduces the  
18 fines to a fraction of the original amount.

19 Is that right? Is that really happening? And if  
20 you do it, why do you do it?

21 MR. DUPLISSEA: No, I can categorically say that  
22 isn't true. Unfortunately, there have been several articles,  
23 both in this last year-and-a-half, year that I've been serving,  
24 as well as the previous four years.

25 It's a very easy charge to make, to say so many  
26 dollars in assessments have been made, yet so many after the  
27 appeals process were upheld.

28 The unfortunate reality is, we are not a public

1 policy entity. We are essentially a judicial body. We are not  
2 the Division. We are not the Division, the OSHA Division that  
3 does the citings, comes to the hearings, presents its evidence,  
4 calls its witnesses, and so on and so forth.

5           The reality of the situation -- I don't mean to  
6 start some internecine battle here within the Department of  
7 Industrial Relations, but the plain and simple fact is, many  
8 times both parties to the action are not prepared, and many  
9 times incorrect safety orders have been cited, and many times  
10 witnesses don't give testimony, and many times contentions are  
11 made about citations that, under the scrutiny of the adversarial  
12 action, quite frankly, just don't hold up.

13           Then again, the Division has the authority to  
14 plea bargain, if you will, and oftentimes do at the  
15 administrative law level as far as the -- for instance, knocking  
16 down what had been cited previously as serious violation to a  
17 general violation, which of course is a tremendous difference in  
18 the level of the penalty.

19           SENATOR HUGHES: We pass all kinds of laws here  
20 in the Legislature. We pass different laws, and then extensions  
21 of state legislative laws on the local level.

22           For instance, in Los Angeles, we had a lot of  
23 horrible things discovered about some restaurant. It was a very  
24 embarrassing situation. We had these laws on the statutes that  
25 weren't being implemented. We had inspections of restaurants  
26 that were only inspected maybe once a year, and they should have  
27 been inspected more frequently. So, we're cleaning that up.

28           Now, I'm also concerned about our largest



1 industry, and that's agriculture. And I understand that  
2 farmworkers are having great problems in some sanitary  
3 conditions, and some just basically human conditions that are  
4 being neglected.

5 What do you think about the enforcement and the  
6 safety of food that we're having grown in our state, as we send  
7 food around the world and food across the nation? And the  
8 legislation provided for penalties in the 1990 piece of  
9 legislation of \$750 for each violation, in '94, we enhanced  
10 these penalties for repeated offenders.

11 I still hear that there are violations, that  
12 there's no adequate drinking water for farmworkers, no adequate  
13 toilet facilities, no toilet paper for farmworkers.

14 Have you really looked into these things? That  
15 just sounds so archaic to me. I can't believe, in this day and  
16 age, if we have these statutes on the books, why aren't we  
17 enforcing them?

18 I really get upset when I hear about all of these  
19 viruses and flus that we may have because our farm products or  
20 farm animals may be infected. Are we going to wait until  
21 something serious happens here, some kind of epidemic or  
22 something, that we haven't looked at the facilities where our  
23 farm products are raised and where farmworkers work? Are you  
24 going to look at that, Mr. Duplissee?

25 MR. DUPLISSEA: The field sanitation cases, I, in  
26 a way, wish we were maybe another three or four months down the  
27 road here, because as you know, there's a time delay between the  
28 time new legislation, regulation takes effect. And then, of

1 course, employers, the appeals process is some ways down the  
2 road.

3                   Currently, right now at this point, we are  
4 still -- we have taken some on our own motion as a Board, and  
5 some others that are being appealed for decisions after  
6 reconsideration. We are trying to bundle all of the field  
7 sanitation briefs that we have so that we can determine  
8 conclusively -- keeping in mind there's prior Board precedent  
9 which guides us generally. Of course now there's a new statute,  
10 new regulations -- to bundle those cases where there is an  
11 appeal, an appealable case, and to, in a comprehensive way, to  
12 once and for all put the imprimatur of the OSHA Appeals Board as  
13 to what is and isn't true.

14                   The public policy issues there, of course, we  
15 don't have a great deal of control there. You as the  
16 Legislature have -- especially in the field of sanitation --  
17 have spoken very loudly and clearly, and really removed a great  
18 deal of the ambiguities that exist in other areas of the Labor  
19 Code specifically with field sanitation. I think there was  
20 probably less question as to the enforcement provisions in field  
21 sanitation probably now than in any other area.

22                   SENATOR HUGHES: I just hope to God that no  
23 epidemic breaks out, and I also hope to God that no editorial  
24 board or ambitious reporter has to make a headline issue of  
25 these things, of statutes that have been on the books for ten or  
26 fifteen years, or even five years ago, that you haven't looked  
27 at. Because we are so responsible for the agricultural products  
28 that we sell, import, export, transport, and the lives of the



1 workers in the fields.

2 So, I hope that this year coming, you'll look and  
3 see how far back you are in your inspection program, and just  
4 basic needs about where people are, do they have a place to wash  
5 their hands? Do they have paper towels to dry their hands? Do  
6 they have a decent toilet to go to, and does it have toilet  
7 paper.

8 I'm talking about basic needs.

9 So, if we don't look into that, and I know that  
10 you're not going to be guilty of not looking into that this  
11 coming year, as you have come to us to renew your contract, and  
12 we renew your contract, I want you to raise your hand and say, I  
13 do.

14 MR. DUPLISSEA: I do.

15 CHAIRMAN LOCKYER: Would you like a drink of  
16 water?

17 [Laughter.]

18 CHAIRMAN LOCKYER: On this point, there seems to  
19 be some issue related to recent reconsideration of some of the  
20 penalties or failure to follow field sanitation laws.

21 Our analysis suggests that the Board has ordered  
22 reconsideration of six cases where there were penalties for  
23 violation of field sanitation standards. What's that about?

24 MR. DUPLISSEA: If it was what I was discussing  
25 earlier today as a result of being contacted by your office,  
26 that was essentially the Board, on its own motion.

27 CHAIRMAN LOCKYER: There was no request from an  
28 employer or anyone else?

1 MR. DUPLISSEA: Right, but it wasn't on field  
2 sanitation. It was the idea that we would take something up on  
3 our own motion. And the conservation I had earlier with some in  
4 a meeting arranged through your office was the fact that we  
5 really shouldn't be doing that.

6 I think once all the facts were on the table,  
7 everyone understood that there is a great need, and the small  
8 part of my job that is public policy when there is a wrong that  
9 must be redressed, that we do have to exercise that ability.

10 And let me give you an example that is a case  
11 recently concluded called Rick's Electric, where the ALJ found,  
12 by reasons of law, testimony, so on and so forth, that the  
13 violations should be vacated and the fine dispensed with.

14 We took it on our own motion, and in fact  
15 reinstated the fine. This was a case of reclassification of --  
16 the reclassification of a serious to a general where there was  
17 serious injury. Not death but serious injury.

18 There was some concern --

19 CHAIRMAN LOCKYER: What's the injustice in this  
20 instance that you're righting?

21 MR. DUPLISSEA: Well, the injustice was, when the  
22 ALJ who heard the -- the administrative law judge hearing the  
23 case felt that the employer made a compelling case for prior  
24 practice, for demonstrating an useful --

25 CHAIRMAN LOCKYER: You mean in the instance  
26 you're citing of serious to general?

27 MR. DUPLISSEA: Right. This was a case where we  
28 did, as a three-member Board, pluck it up and redo it.

1 CHAIRMAN LOCKYER: Why did you pluck these?

2 MR. DUPLISSEA: Because there was a serious  
3 injury and there was a suspension of the citation.

4 CHAIRMAN LOCKYER: No, I mean the six.

5 MR. DUPLISSEA: Because they are to be bundled  
6 with the rest of the field sanitation cases.

7 CHAIRMAN LOCKYER: You're reviewing the general  
8 batch of cases?

9 MR. DUPLISSEA: Yes, because we now have new law,  
10 and we also have prior board precedent which has guided us one  
11 way; now we're going to be going another. So, to make them  
12 consistent, they will all be bundled together.

13 CHAIRMAN LOCKYER: What would be the change in  
14 direction?

15 MR. DUPLISSEA: Now, with the new legislation  
16 passed and the appeals having to do with it, of course this  
17 legislation is much more specific than those parts of the Labor  
18 Code which had previously had jurisdiction over these kinds of  
19 citations in farm situations.

20 CHAIRMAN LOCKYER: This is '94 legislation?

21 MR. DUPLISSEA: This is the '94 legislation.  
22 Well, the enhancements, I think, are '96. I believe the penalty  
23 enhancements and the automatic penalty enhancements are '96.

24 CHAIRMAN LOCKYER: It says '94 in our workup, but  
25 that may be inaccurate.

26 That's an interesting example if you're showing  
27 how you can be more scrupulous about enforcing the intent of the  
28 law.

1 MR. DUPLISSEA: And just having the right to do  
2 that.

3 CHAIRMAN LOCKYER: Another artful device that you  
4 learned from the excellent lawyer next to you there.

5 But the point is, there seemed to be six field  
6 sanitation cases unrelated to serious-to-general.

7 MR. DUPLISSEA: Taken up on our own motion,  
8 without the appeal coming from the employer, simply so we can  
9 bundle them to make them consistent with whatever we come up  
10 with vis-a-vis prior board precedent.

11 CHAIRMAN LOCKYER: I guess I get it now.

12 Senator Ayala.

13 SENATOR AYALA: In addition to what Senator  
14 Hughes referred to in the analysis, the conditions that are  
15 described in the analysis are shocking. This is back in 1940,  
16 when I worked the fields, that this was existing. You'd think  
17 that it would have improved.

18 Now, your commission inspected less than 50  
19 percent of all the California farms. Out of those, 50 percent  
20 were in violation of sanitation laws.

21 I didn't quite hear the answer to Senator Hughes.  
22 What are we going to do about that?

23 MR. DUPLISSEA: Of course, now the Appeals Board  
24 itself does no inspection. We are essentially the court of  
25 appeal for the employer after the citation.

26 SENATOR AYALA: You're the appeals. We should be  
27 directing this to the Board itself. I wonder what they're doing  
28 about that? Do they need personnel?



1 MR. DUPLISSEA: Just between us, not enough.

2 CHAIRMAN LOCKYER: I think we would agree.

3 Other questions from Members? Anyone wish to  
4 comment or testify?

5 What is the pleasure of the Committee?

6 SENATOR LEWIS: Move confirmation --

7 CHAIRMAN LOCKYER: We have a motion to confirm.  
8 May I substitute the roll? All right, that'll be the order.  
9 We'll add Mr. Brulte if he returns, but unanimous of those  
10 present.

11 [Thereafter, SENATOR BRULTE  
12 returned to Committee and  
13 added his Aye vote, making  
14 the final vote 5-0 for  
15 confirmation.]

16 MR. DUPLISSEA: Mr. Chairman and Members, thank  
17 you very much.

18 CHAIRMAN LOCKYER: Thank you for your  
19 conscientious service.

20 We have Ms. Forster. Senator Craven, your turn.

21 SENATOR CRAVEN: Thank you for giving us this  
22 opportunity. And I know Mary Jane has been, since about 2:00  
23 o'clock this morning, getting ready for this. She read a little  
24 bit of what we wrote, and then she said two rosaries, I think.

25 She was, as you may or may not know, reappointed  
26 to the Water Resources Control Board back in February of 1997.  
27 She was the Governmental Affairs Manager for the Municipal Water  
28 District of Orange County from 1976 until her appointment.



1                   From 1983 to '93, she was a member of the San  
2                   Diego Regional Water Quality Control Board. From 1989 to '91,  
3                   she was on Planning Commission for San Juan Capistrano. From  
4                   1990 to '93, she was member of USCP, which is National Drinking  
5                   Water Advisory Council.

6                   She earned a Bachelor of Arts degree in Social  
7                   Science from the College of Mount St. Vincent in New York.

8                   I've had, by virtue of my district, I suppose, as  
9                   much as anything, an opportunity to have a chance to watch her  
10                  in that work, and to back up what she thought was the  
11                  appropriate approach.

12                 And I must say this, that despite her  
13                 graciousness, she has a great will. And if she feels something  
14                 should be done for the people, or vice-versa, she will be the  
15                 first to tell you, and she will not move off, because she has  
16                 studied it, and she has taken hours of her time to check into  
17                 those things which are the real meat of the decisions which must  
18                 be made in water districts and in that general area of concern.

19                 I think a great deal of her, and I've watched her  
20                 over a period of a few years. And the fact that we are sort of  
21                 landsmen -- she's a New Yorker, and I'm a Philadelphian -- that  
22                 must be something that we have between us. I know it isn't that  
23                 purple dress.

24                 CHAIRMAN LOCKYER: I know how you got to the West  
25                 Coast, but I don't know how she got from New York.

26                 SENATOR CRAVEN: She may have been a Marine, too.  
27                 I don't know.

28                 SENATOR HUGHES: The same way I did, by airplane.

1 [Laughter.]

2 SENATOR CRAVEN: But, you know, I used to have a  
3 nun when I was in grammar school, and she was very, very small,  
4 tiny. And she was the toughest one we had. And she used to  
5 say, or her saying was, I'm small, but oh my.

6 I think she really fits that bill, too, because  
7 as a woman who's been out among the folks, trying to provide for  
8 them services that are very much needed and should be done in an  
9 equal way, she has gained a great deal of experience. I'm  
10 confident that she was appointed originally because of that  
11 fact. She has done exceedingly well.

12 So, I was very happy to come up here to offer  
13 just a few words.

14 The date's still on; isn't it.

15 MS. FORSTER: Uh-huh.

16 SENATOR CRAVEN: I hope that you have had the  
17 opportunity to look over some of the material, which I'm sure  
18 you have. I'm sure in so doing, you will feel as I do that she  
19 is a person who is certainly worthy of appointment to this very  
20 important task.

21 CHAIRMAN LOCKYER: Thank you, Senator.

22 SENATOR CRAVEN: Thank you.

23 SENATOR AYALA: He neglected one very important  
24 item here, which said that she was named Woman of the Year of  
25 the California Legislature by Senator William Craven in 1997.

26 SENATOR CRAVEN: Well, the first thing, I'll  
27 drink to you.

28 CHAIRMAN LOCKYER: Senator, have you concluded?

1 Thank you, sir.

2 Did you want to start with any comment?

3 MS. FORSTER: I just would answer your question,  
4 how I got to California. I came here as a school teacher for  
5 the Los Angeles City Schools.

6 CHAIRMAN LOCKYER: Because that job was there?  
7 Is that what drew you?

8 MS. FORSTER: I had a brother out here who was  
9 going to be a pharmacist and wanted me to come out get out of  
10 the New York for a little while. I came and I stayed, and I  
11 taught for ten years. And then I got an opportunity to get into  
12 water resource education development. I did that for ten years,  
13 doing all that research to develop programs.

14 I got a great passion for legislation and  
15 regulation on clean water and safe drinking water. And this is  
16 my 22nd year in water resources. And thanks to you and your  
17 colleagues, I've had four great years on the State Water  
18 Resources Board as the public member. I've enjoyed every moment  
19 of it.

20 I know it's late in the day, so I welcome your  
21 questions.

22 CHAIRMAN LOCKYER: We've had an opportunity to  
23 have extensive discussions, but that precedes Senator Hughes's  
24 membership on the Committee. As usual, you're in the capable  
25 hands of three Democrats, I point out.

26 SENATOR CRAVEN: I don't know what she is.

27 CHAIRMAN LOCKYER: Oh, it doesn't matter. I  
28 know, but like you, we don't even think about those things.

1 SENATOR CRAVEN: That doesn't really move us.

2 CHAIRMAN LOCKYER: Bill, has this Governor  
3 appointed a Democrat to anything?

4 SENATOR CRAVEN: I doubt it.

5 CHAIRMAN LOCKYER: I can tell you, 93 percent.

6 SENATOR CRAVEN: Only if somebody lied to him, I  
7 think.

8 [Laughter.]

9 CHAIRMAN LOCKYER: But we don't look at those  
10 things.

11 What's been the toughest issue that you've  
12 confronted during these last four years?

13 MS. FORSTER: The toughest issue that comes  
14 before our Board deals with people who have to clean up  
15 underground storage tanks. They're in a priority list, and they  
16 have spent their whole livelihood cleaning up. And they're not  
17 yet to the point where they can be reimbursed. That is very  
18 hard. We can't move them up unless there's something very dire,  
19 because everybody else has been waiting.

20 CHAIRMAN LOCKYER: How often do you hear those?

21 MS. FORSTER: Not very often, but when you do,  
22 they're so heart breaking.

23 CHAIRMAN LOCKYER: Is it a few times a year?

24 MS. FORSTER: No, about once a year maybe. Last  
25 year we had one; the year before, one or two.

26 CHAIRMAN LOCKYER: How long is the line waiting?

27 MS. FORSTER: Well, next year is the end of the  
28 underground tank program. Everybody's supposed to have



1 remediated and done their corrective action.

2 We have -- we've taken in \$700 million into the  
3 fund. We spend about \$20 million. Reimbursements are a million  
4 dollars of four different categories.

5 It's working, and it's just, some people just  
6 have the unfortunate experience that they can't wait. And we  
7 try to accommodate them. That's been the toughest.

8 CHAIRMAN LOCKYER: Other questions.

9 SENATOR HUGHES: I'd like to move confirmation.

10 CHAIRMAN LOCKYER: All right, a motion is made to  
11 confirm.

12 May I record the three of us as voting Aye, and  
13 we'll leave the role open for our colleagues to join.

14 [Thereafter, SENATOR BRULTE  
15 and SENATOR LEWIS returned  
16 to Committee and added their  
17 Aye votes, making the final  
18 vote 5-0 for confirmation.]

19 Thank you for your patience, and good luck. Keep  
20 up the good work.

21 MS. FORSTER: Thank you, Senator.

22 SENATOR CRAVEN: Thank you, Mr. Chairman.

23

24 [Thereupon. This portion of the  
25 Senate Rules Committee hearing was  
26 terminated at approximately 4:35 P.M.]

27 --ooOoo--

28



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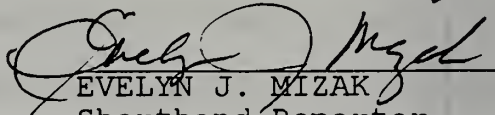
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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

STAN NEAL, Consultant to SENATOR BRULTE

ALSO PRESENT

J. W. FAIRMAN, JR., Warden  
California State Prison, Corcoran  
California Substance Abuse and Treatment Facility

FRANK R. SEARCY, President  
Chicano Correctional Workers Association

ROY MABRY, President  
Association of Black Correctional Workers

GREGORY SENEGAL, Vice President  
Walden House, Inc.

ROBERT A. LAURIE, Member  
Energy Resources Conservation and Development Commission

RICHARD E. MALLORY, Director  
Department of Housing and Community Development

MARC BROWN  
California Coalition for Rural Housing

CHRISTINE MINNEHAN  
Western Center on Law and Poverty

1  
2 MICHAEL HERALD  
Housing California

3 ART CARTER  
4 California Pipe Trades

5 DAN CARDOZA  
6 California Pipe Trades

7 GARY PATTON  
8 Planning and Conservation League  
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: We'll hear from some appointees. Mr. Fairman, good afternoon.

MR. FAIRMAN: Good afternoon.

CHAIRMAN LOCKYER: Very often people start with a statement. You're invited to, if you wish to.

MR. FAIRMAN: With your permission, I'd like to read this statement into the record.

I'd like to say good afternoon to the Senators and Members of the Rules Committee. My name is J. W. Fairman, Junior. I stand before you today with the hope that you confirm me as Warden of the largest and most progressive prison in this great state of California and arguably the country.

I'd like to share with you today just who I am, and why I merit your consideration. I understand that you have a copy of my resume, so I shall only touch upon the highlights of my career and some of my specific management belief or beliefs.

Although I'm new to the California Department of Corrections in the State of California, I'm a veteran of 27 years in the public service, that is the corrections industry; 26 of those years have been in an increasingly administrative capacity.

And along with my extensive experience, I have recognized that a good and continuing education is paramount to the successful management of a multi-million dollar industry. I will continue to avail myself of post graduate

1 training programs in the area of management, most notably the  
2 John F. Kennedy School of Government at Harvard University in  
3 Cambridge, Massachusetts. And number two, the J. L. Kellogg  
4 Graduate School of Management at Northwestern University in  
5 Evanston, Illinois.

6 Keeping the last two topics in mind, I shall now  
7 tell you that I believe in a strong management style.  
8 Specifically, fiscal responsibility, management team concept,  
9 empowering staff, and strong communication.

10 I see the managing of the California Substance  
11 Abuse Treatment Facility and State Prison as a challenge and an  
12 opportunity for California to establish a model for the rest  
13 of country to follow. Meeting this challenge has and continues  
14 to provide me with a tremendous opportunity to be a part of the  
15 revolutionary concept in the field of corrections. It has also  
16 provided me with the opportunity to learn a whole new system of  
17 policies, procedures, customs and mores.

18 One of the key elements of strong management is  
19 fiscal responsibility. By this I mean the following: number  
20 one, identification of fiscal parameters and limitations; number  
21 two, establishment of meaningful monitoring systems for an  
22 accurate and timely accountability of over-expenditures with the  
23 thought in mind of forecasting problem areas; and number three,  
24 establishing a plan for swift action to rectify  
25 over-expenditures.

26 I strongly believe in management team concept.  
27 By that I mean I involve the appropriate team members for  
28 meaningful discussion and input. This includes a specialized

1 department within CDC Headquarters.

2               Number two, I accept all the input from  
3 management staff at SATF.

4               And number three, I make the best possible  
5 decisions. However, prior to implementation of difficult  
6 decisions, I contact my superiors for their review and  
7 consultation.

8               I also believe in empowering my staff with the  
9 delegation of authority, not relegation of authority. I  
10 delegate to staff the authority which allows them to perform  
11 their job duties. I believe in holding people accountable for  
12 their actions.

13              I also believe in the effectiveness of good  
14 strong communication. Some examples are, I communicate basic  
15 expectations to all staff during the orientation period. Number  
16 two, I provide staff with meaningful training so they can  
17 perform their job duties to the best of their abilities. Number  
18 three, I conduct town hall meetings, or open forums feedback  
19 from employees with them receiving an amnesty so they can feel  
20 comfortable.

21              Now that I've shared with you who I am and what  
22 my management beliefs are, I shall tell you why I traveled here  
23 to be Warden of the California Substance Abuse Treatment  
24 Facility State Prison at Corcoran.

25              When I first became aware of CDC plans for  
26 opening and operating the Substance Abuse Treatment Facility, I  
27 was very impressed and interested. I had several conversations  
28 and interviews with the Undersecretary of YACA, the Director of

1 CDC, the Deputy Director of Institutions, as well as other top  
2 level managers of CDC, where we discussed management and  
3 correctional philosophy.

4 The State of California and the California  
5 Department of Corrections has conceived and implemented one of  
6 the most insightful and innovative plans that I've seen in the  
7 correction industry. The notion of an innovative, fiscal design  
8 with the therapeutic community-based drug abuse treatment is  
9 unprecedented and very exciting. I see this as a paradigm shift  
10 from the warehousing concept and a worthwhile visionary  
11 approach to reducing the ever increasing prison population.

12 The research that backs this concept clearly  
13 indicates that substance abuse treatment programs will reduce  
14 the prison recidivism rate by approximately 35 percent over a  
15 two-year period. It will help in the rehabilitation of felon  
16 drug users and directly reduce the crime rate.

17 I am proud and excited to be a contributing  
18 member of this new undertaking. I want to thank you Senators  
19 for the opportunity to appear before you today.

20 CHAIRMAN LOCKYER: Thank you very much. I know  
21 we'll have questions, but maybe it would be expeditious to take  
22 testimony first.

23 Are there people present who'd wish to either  
24 support or oppose the confirmation?

25 We have letters in our file that are numerous,  
26 from mayors and so on. And I might note the presiding judge in  
27 Cook County just sent a letter of support as well.

28 Good afternoon.



1 MR. SEARCY: Good afternoon, Senator and  
2 Committee Members.

3 I am Frank Searcy, President of the Chicano  
4 Correctional Workers Association.

5 We are here because we believe in the things that  
6 Mr. Fairman has shared with you today. We understand his  
7 concept. We understand that he has an outstanding experience  
8 record in other areas that he has been employed.

9 Therefore, we join him in asking you to take this  
10 to the full Senate, and we support the candidate for the Warden  
11 at that institution.

12 Thank you, sir.

13 CHAIRMAN LOCKYER: Thank you.

14 Please, next.

15 MR. MABRY: Chairman Lockyer and the Senate Rules  
16 Committee Members, my name is Roy Mabry. I'm the State  
17 President for the Association of Black Correctional Workers.

18 We're giving our full support for confirmation  
19 for Mr. Fairman's position.

20 Also, I had -- when Frank was talking, Frank  
21 Searcy, who just walked away from the podium here, he used all  
22 the words that I was going to state to you. We're contemplating  
23 our plan.

24 Anyway, full support for confirmation.

25 CHAIRMAN LOCKYER: Thank you.

26 MR. SENEGAL: Good afternoon, Senator Lockyer and  
27 Members of the Senate Rules.

28 I'm Gregory Senegal. I'm one of the vice



1 presidents of the Walden House, which is one of the providers  
2 that is working at the SATF.

3 We are here to support Warden Fairman because not  
4 only has he provided leadership in bringing together what I  
5 consider to be a very difficult task, but he's done it in the  
6 vision and also within the scope of the legislation as it was  
7 formally adopted by you, Senator Lockyer, some six years ago.

8 Thank you very much.

9 CHAIRMAN LOCKYER: No opposition present, I note,  
10 only supporters.

11 Are there questions? Senator Ayala.

12 SENATOR AYALA: I'd just like to state that I had  
13 a nice long talk with the Warden. He pointed out that the  
14 program at your institution is not similar to the one at Norco,  
15 which deals with the substance abuse individuals.

16 This program is for those who are convicted of  
17 other crimes, other than drug abuse, but they are involved with  
18 drugs. So, before they get discharged, they're transferred to  
19 your institution for this final training they get before they go  
20 out in the street.

21 Did I interpret that correctly?

22 MR. FAIRMAN: That's correct, Senator.

23 SENATOR AYALA: I wondered why, if it's working  
24 there, why wasn't it initiated at Norco? But those are people  
25 who are convicted of drug abuse. That's why they're serving at  
26 Norco. The people at your institution are those that are  
27 convicted for other crimes other than drug abuse, but they are  
28 addicted to drugs, so they place them at your institution prior

1 to being discharged.

2 Is that correct?

3 MR. FAIRMAN: That's correct.

4 SENATOR AYALA: What's the average stay at the  
5 institution?

6 MR. FAIRMAN: We're projecting the average stay  
7 would be between six and twelve months prior to them being  
8 paroled. We started to program in September, so I think we're  
9 just beginning to have our first people go out onto parole.

10 SENATOR AYALA: And then you have follow-up  
11 program as well, don't you?

12 MR. FAIRMAN: We call it continuing, continuing  
13 care program where they can be placed into in-patient treatment  
14 our out-patient treatment under the supervision and aegis of the  
15 parole agent.

16 SENATOR AYALA: That's optional. It's not  
17 mandatory that they take that training or that --

18 MR. FAIRMAN: It's not mandatory at this point in  
19 time, but we try to encourage them to participate.

20 SENATOR AYALA: But you only had, what, four?

21 MR. FAIRMAN: We've only had four or five to  
22 date.

23 SENATOR AYALA: You don't really have a track  
24 record yet to see if those folks follow up on that type of  
25 training beyond the incarceration period.

26 MR. FAIRMAN: That's correct, Senator.

27 SENATOR AYALA: I think you're doing a wonderful  
28 job from what I've heard.

1 Mr. Chairman, I don't have any other questions.

2 CHAIRMAN LOCKYER: Thank you, Senator.

3 Could you tell us a little about your experience  
4 thus far in terms of the difficulties or ease that you've had in  
5 recruiting qualified staff? And then where I'm headed is, have  
6 you learned that there's any constraint on us expanding the  
7 numbers of treatment slots in the state prison system because of  
8 the shortage of qualified staff or anything of that nature?

9 MR. FAIRMAN: Well, I have had the opportunity  
10 since last January to go around at my boss's suggestion to see  
11 other prisons. So, I still, when I go to other prisons, all of  
12 the good people that I see, I'll try to recruit them, to more  
13 appropriately state it.

14 I think that CDC has started an identification  
15 process of good staff, and you just have to look for them.

16 Beyond that, I think that some of the things that  
17 the Department is doing in terms of its training programs are  
18 beginning to identify people who, if their behavior continues to  
19 be positive, will be people that can go into these and other  
20 type programs.

21 With respect to the only problem with having more  
22 people in drug abuse programs is the lack of money, obviously.

23 CHAIRMAN LOCKYER: If you had more money, could  
24 you ramp up significantly?

25 MR. FAIRMAN: If we had more money, I think  
26 Department has some of that and has some plans about doing  
27 that. And I think that it would -- I don't think that you would  
28 want to ramp up significantly. I think you'd want to gradually

1 increase over the period of time so that you could get staff  
2 trained and used to these types of concepts, and the quality  
3 does not get, I want to say diluted, too significantly.

4 CHAIRMAN LOCKYER: Are you able to tell yet?  
5 Let's say this budget cycle, we've authorized from four hundred  
6 now to another thousand beds. I think I'd like to see us get  
7 close to 50 thousand. That certainly is realistic in terms of  
8 the number of prisoners that have a problem.

9 Maybe that's a way to segue into the Califano  
10 Report and the suggestion that maybe four-fifths or so of  
11 prisoners in the United States have a serious drug or alcohol  
12 problem, or that that contributed in some substantial way to  
13 their criminal behavior.

14 I assume ours are like that, that the bulk of  
15 them have some abuse, substance abuse problem.

16 MR. FAIRMAN: Well, that's true in this state and  
17 nationwide, and it was good to see the report come out.

18 The CDC was aware, through its Director a couple  
19 years ago, that those statistics were, if you will, germinating  
20 and would come out after they'd been reviewed by all the  
21 appropriate bodies.

22 So, 75 percent, I think, is what we think it  
23 might be in this Department as the underlying problem. But  
24 there are other problems like crime time behavior, you know,  
25 that type of thing, that may not allow every individual to  
26 participate in it at this point in time.

27 CHAIRMAN LOCKYER: Do you have rough sense, of  
28 the 75 percent, let's say that's 110-115,000 prisoners, what



1 proportion of those might be potential clients in the substance  
2 abuse section?

3 MR. FAIRMAN: Senator, I don't have a view of  
4 that because, you know, the scope of just being a warden, I  
5 think that would more appropriate to CDC administrator.

6 CHAIRMAN LOCKYER: But recruitment, how many  
7 staff do you have?

8 MR. FAIRMAN: We have approximately 900 now.

9 We found a very interesting phenomenon, if you  
10 will. And that is, the custody staff, more specifically, once  
11 they have gone through the cross training provided by the  
12 University of California San Diego's Medical School, their  
13 Addiction Technology Transfer Center, that, you know, people  
14 pretty much make their minds up that, you know, we'd like to  
15 operate these prisons in a way that allows the individual there  
16 to not come back to prison, and us not having to be so  
17 aggressive every day. That's been one of the most significant  
18 findings I've observed in this short period of time.

19 The other is the one inmates, you know, the race  
20 problem of grouping. When you look into a substance abuse  
21 program, you see those type of things kind of change, and I  
22 think that some of the staff have told me that that's very  
23 significant.

24 CHAIRMAN LOCKYER: Why is that?

25 MR. FAIRMAN: Well, because of the therapeutic  
26 community model.

27 CHAIRMAN LOCKYER: Just work through their  
28 problems or attitudes?



1 MR. FAIRMAN: Right.

2 CHAIRMAN LOCKYER: So, you could maybe do what  
3 you've done this last year a couple more times in the next year  
4 without asking the Central Office?

5 MR. FAIRMAN: Well, let's put it like this,  
6 Senator. The reason I came to California is because, as I said,  
7 I have seen this. I've seen it piecemeal. And California  
8 historically -- most of my career's in Illinois -- and  
9 California in the past had been ahead of the curve, so to speak,  
10 and I thought it leap-frogged back in front with this concept,  
11 as it did with building prisons.

12 Instead of build like most states, they did come  
13 up with pretty much a model that saved money, and they pretty  
14 much knew, and knew what kind of staff. And I thought that was  
15 very significant in terms of what I've seen in the state I came  
16 from and other states.

17 CHAIRMAN LOCKYER: We're still the pioneer?

18 MR. FAIRMAN: I think this significantly put you  
19 ahead of the game.

20 CHAIRMAN LOCKYER: What's been the hardest part  
21 of the job so far?

22 MR. FAIRMAN: There really hasn't been any hard  
23 thing. I think that the hard part, you know, coming to any new  
24 operation is basically gaining credibility through your behavior  
25 as opposed to conversation, but I expected that.

26 CHAIRMAN LOCKYER: The sort of evaluation testing  
27 phase, or whatever.

28 MR. FAIRMAN: The Director can appoint me, and

1 the employees can bring you back.

2 CHAIRMAN LOCKYER: Well said.

3 You mentioned adjusting to the customs, and mores  
4 and procedures of a different system. Are there any that stand  
5 out in your mind as distinct from, let's say, Illinois, or the  
6 ones we ought to learn about?

7 MR. FAIRMAN: The biggest thing that jumps out in  
8 my mind is basically California, you know, specifically in the  
9 design and the breakdown of inmate population, gives it a lot  
10 more control in terms of what other states have gone through in  
11 terms of the violence. Even though the violence that they have,  
12 I understand it's what you're used to in your own community, so  
13 to speak.

14 But by the comparison to other states, you know,  
15 I think that if you looked at it, the situation is excellent  
16 here. You have not lost a prison in -- I don't know. It  
17 certainly precedes '84, or back to at least '84 that I can  
18 remember. No serious, serious injury, barring some of the  
19 things that we've heard about some of the prisons, but every  
20 state has gone through that and worse. That doesn't make me  
21 accept it and not look for improvements.

22 The other thing that I think is the continuing  
23 training. Sometimes the first thing that goes away in  
24 budget-crunch time is training. This Department has not given  
25 up on the training, training program, you know, start to cut.

26 CHAIRMAN LOCKYER: For prisoners?

27 MR. FAIRMAN: For the staff.

28 CHAIRMAN LOCKYER: And others have cut back in

1 that?

2 MR. FAIRMAN: Right. That's the first thing that  
3 kind of becomes within the person's bull's eye, so to speak.

4 CHAIRMAN LOCKYER: Senator Ayala.

5 SENATOR AYALA: The new grooming standards will  
6 be kicked in pretty shortly now for the prisoners?

7 MR. FAIRMAN: That's correct.

8 SENATOR AYALA: Do you anticipate any problems  
9 with that? Have you had any problems up to now?

10 I know at Folsom they did.

11 MR. FAIRMAN: You know, just at this prison, I  
12 don't anticipate any problems. I mean, obviously there will be  
13 a small percentage of people that may have some concerns, like  
14 Native Americans, Rastafarians, but basically the way the plan  
15 is set out by CDC, I don't think we'll get into a big problem in  
16 terms of any kind of physical confrontation because the  
17 application is going to be pretty laid out pretty well. And  
18 also, it's based on sound correctional philosophy, and that is  
19 the security issue.

20 SENATOR AYALA: What about the elimination of  
21 tobacco for the inmates? That's coming next, I understand.  
22 Will that create a problem at your institution?

23 MR. FAIRMAN: Any change creates problems. I  
24 think that it's how you implement the change.

25 I think that what we will have is, basically  
26 we'll have to have like programs to deal with people who are,  
27 you know, if you will, being put in a position of having tobacco  
28 taken away from them. And I think there's a lot of programs,

1 both medical and psychological, that you can have, you know,  
2 exercise programs that you can have to cut off a substance.

3 SENATOR AYALA: Do you think that's a good thing  
4 to do that, to remove use of tobacco from the prison inmates?

5 MR. FAIRMAN: Well, you can look at it on two  
6 levels. You know, you look at it on the level of somebody's  
7 choice, or may not, but a person in prison doesn't have all the  
8 choices. You look at the cost of medical. So, I mean, there  
9 are arguments on both sides of this case for it.

10 I don't have any disagreement with it.

11 CHAIRMAN LOCKYER: We've been joined by Senator  
12 Hughes, and I believe Senator Ayala --

13 SENATOR AYALA: I'd like to move the  
14 confirmation.

15 CHAIRMAN LOCKYER: -- to recommend confirmation.

16 Well, I only want to just give you warning that I  
17 am a supporter of your confirmation.

18 I hope this program can get to be, before I  
19 leave, to have a statutory commitment to getting it  
20 significantly larger that it is today. It may take some time to  
21 phase that in and to recruit personnel, and so on, but it just  
22 seems to me that if we don't address the underlying drug  
23 problems that so many prisoners have got, we're asking for a  
24 recycling of criminals and costs that are associated with that,  
25 and a lot of victims and ruined lives.

26 So, just keep thinking ahead about what would you  
27 do if someone said, gee, you've got to have 5,000 more next  
28 year, or whatever number. I make up that number, but it's going



1 to be big, so get ready.

2 MR. FAIRMAN: I think we look for the  
3 opportunity.

4 CHAIRMAN LOCKYER: Senator Ayala has that motion  
5 to confirm.

6 Call the roll, please.

7 SECRETARY WEBB: Senator Ayala.

8 SENATOR AYALA: Aye.

9 SECRETARY WEBB: Ayala Aye. Senator Brulte.

10 SENATOR BRULTE: Aye.

11 SECRETARY WEBB: Brulte Aye. Senator Hughes.

12 SENATOR HUGHES: Aye.

13 SECRETARY WEBB: Hughes Aye. Senator Lewis.

14 SENATOR LEWIS: Aye.

15 SECRETARY WEBB: Lewis Aye. Senator Lockyer.

16 CHAIRMAN LOCKYER: Aye.

17 SECRETARY WEBB: Lockyer Aye. Five to zero.

18 CHAIRMAN LOCKYER: Thank you and good luck.

19 MR. FAIRMAN thank you.

20 CHAIRMAN LOCKYER: Mr. Laurie. We have  
21 Mr. Laurie, Energy Resources Conservation and Development  
22 Commission.

23 Do you want to start with any opening comment?

24 MR. LAURIE: Thank you, Mr. Chairman, very  
25 much.

26 Mr. Chairman, Senators, my name is Robert Laurie.  
27 I've had the previous privilege of being confirmed by the  
28 Legislature as a result of my appointment to the Contractors



1 State License Board. However, I never had the pleasure of  
2 appearing in front of this body. Needless to say, I am very  
3 happy to be here.

4 As a first order of business, I would like to  
5 express my appreciation to your very professional staff,  
6 Mr. Chairman. My time period for confirmation was somewhat  
7 constrained. I think without the cooperation and  
8 professionalism of your staff, I may have had timing problems,  
9 and I'm deeply appreciative of that.

10 Mr. Chairman, you do have my resume before you.  
11 Under the Warren-Alquist Act, the position to which I have been  
12 appointed is required to be filled by an attorney with  
13 administrative law experience. I believe a review of my resume  
14 will indicate that my working experience has been compatible  
15 with that requirement.

16 Also on my resume, Mr. Chairman, is a listing of  
17 the committees and my areas of responsibilities under which I  
18 have been acting for last eleven months.

19 There is a lot to talk about. We are involved in  
20 the implementation of AB 1890, the restructuring legislation  
21 which was unanimously passed by the Legislature. We are dealing  
22 with nuclear transportation issues. We are dealing with  
23 internal reorganizational issues consistent with the dynamic  
24 change in the energy world. There are NTB issues which are  
25 being discussed as I speak before you today.

26 I am inclined, as an attorney, Mr. Chairman, and  
27 almost compelled to want to discuss these and the many other  
28 issues that are of interest to you as well as my Energy

Commission. However, in light of your time constraints, and I would anticipate, in light of my desire to obtain confirmation, I will pass on further comments as part of my opening statement.

I would, however, like to close by taking this opportunity to offer my appreciation to my fellow Commissioners and my extraordinarily talented staff at the Commission for their support for the last eleven months.

And finally, Mr. Chairman, I recognize that it is the Office of the Governor, and it is this Legislature that is the true representative of the people. Thus, my honor of being appointed and reappointed by the Governor, and also my honor to appear before you today to seek your advice and consent for that appointment.

The coming year is going to be a challenging one, an exciting one, Mr. Chairman, and I for one am looking forward to it. I seek your support.

I will close and indicate my availability to respond to any questions that you may have.

Thank you, Mr. Chairman.

CHAIRMAN LOCKYER: Thank you.

Is there anyone present who would wish to comment either for or against the nomination?

Seeing none, I'll ask if Members of the Committee have any issues they'd wish to raise?

When were you appointed?

MR. LAURIE: Originally appointed in February, 1997. Reappointed January 7th, I believe, of this year.

1 CHAIRMAN LOCKYER: Senator Brulte.

2 SENATOR BRULTE: Have you been in communication  
3 about the ISO and the PX leadership?

4 MR. LAURIE: Not directly, Senator. I have been  
5 in communication with the oversight board.

6 SENATOR BRULTE: Do you have any information for  
7 us on when we will start up, and if March 31st is the real date?

8 MR. LAURIE: My understanding, Senator, is that  
9 there is a great deal of confidence that that is a good date.

10 Prior to startup, there must be a 15-day notice  
11 to the Federal Energy Regulatory Commission, and before that,  
12 there is additional testing.

13 Those individuals that are involved in this  
14 process currently have a good deal of confidence. Knowing the  
15 capabilities of these individuals, Senator, I share their  
16 confidence.

17 CHAIRMAN LOCKYER: It doesn't relate to this  
18 task, but it was interesting to me to see all the comment from  
19 the directors of the Power Exchange, and ISO particularly,  
20 saying, well, the Legislature just made up a date for operation  
21 of the system, so somehow that was political, was the claim.

22 I guess those guys don't have to come in for  
23 confirmation. If they show up, I'm a no vote after that start.

24 SENATOR BRULTE: At the risk of being Dick Floyd,  
25 those appointments weren't made in a timely manner, either.

26 CHAIRMAN LOCKYER: The whole system --

27 SENATOR BRULTE: Sure.

28 CHAIRMAN LOCKYER: They seem to think somehow --

1 the comment was sort of critical of the legislation, that  
2 somehow there was this date chosen that was inaccurate.

3           Meanwhile, they seem to continue to develop  
4 separate and independent systems that couldn't communicate with  
5 each other, which strikes me as, perhaps, fundamental to their  
6 job.

7           Our notes, Mr. Laurie, suggest that the spike in  
8 gasoline prices that occurred in California subsequent to  
9 reformulated gas being introduced in '96 went unpredicted by the  
10 Commission. Then there's some newspaper story somewhere said  
11 well, they really knew, the staff knew, but they didn't tell the  
12 Commissioners.

13           Can you help us understand anything about that  
14 issue? Should it have been noticed? Is that part of the  
15 responsibility, to forecast those kind of developments in  
16 prices?

17           MR. LAURIE: Certainly one of our tasks,  
18 Mr. Chairman, is to seek to accomplish that forecasting.

19           Not being present for that particular analysis, I  
20 cannot convey any personal information.

21           I can, however, convey how I believe things are  
22 done at the Commission.

23           Either I am terribly naive, which, perhaps, I've  
24 been accused of at times, but I do not believe that either the  
25 staff or any Commissioner that was on the Commission at the time  
26 would have had any cause to not bring before the public, before  
27 this body, the truth as they would have known it.

28           Now, we all know that there are a number of



1 causal factors relating to the price of gasoline. The  
2 reformulated portions of our gasoline and prices related thereto  
3 is only one element of that.

4 So, to the extent that there was any missed  
5 point, certainly that is watched on a regular basis, and that  
6 area is certainly an area of interest to me.

7 But I can assure this body that had any  
8 information been known, it would have been revealed because,  
9 sir, that is our job.

10 CHAIRMAN LOCKYER: Other questions? What's the  
11 pleasure of the Committee?

12 SENATOR AYALA: Can I ask a question regarding  
13 deregulation.

14 Is that at this point going according to what was  
15 intended, were the last cost for the energy to the consumers out  
16 there? Or, it will end up that the small business and consumers  
17 be subsidizing the large consumers?

18 MR. LAURIE: Thank you, Senator.

19 There are hundreds of professional economists  
20 that analyze that question on a daily basis.

21 If I were speaking to single residential  
22 consumers, I would indicate that, as I am, I would indicate that  
23 I am simply going to have to wait and see what ultimately the  
24 free market does to my electric bill.

25 Certainly when this body was contemplating the  
26 restructuring process, there were many critical issues,  
27 including the high cost to all consumers of electricity, and  
28 most notably, our industries, which were causing industries to



1 leave California in large numbers.

2 I think the at least temporary benefit available  
3 to consumers in the reduction will be helpful. What ultimately  
4 will occur -- and there are a lot of folks around who get paid a  
5 lot of dollars to anticipate and forecast the free market  
6 system, and certainly we have individuals within our Commission  
7 that are doing the same -- and as tomorrow occurs and the year  
8 after that occurs, we will certainly be in a better position to  
9 report to you as to what our anticipations are in that regard.

10 SENATOR AYALA: Thank you.

11 CHAIRMAN LOCKYER: Senator Hughes.

12 SENATOR HUGHES: Move.

13 CHAIRMAN LOCKYER: Senator Hughes made a motion  
14 recommending confirmation.

15 May I substitute the prior roll? That will be  
16 the order.

17 Thank you, sir.

18 MR. LAURIE: Thank you very much.

19 CHAIRMAN LOCKYER: Mr. Mallory is our next person  
20 to hear from.

21 Good afternoon.

22 MR. MALLORY: Good afternoon.

23 CHAIRMAN LOCKYER: Do you wish to start with any  
24 comment?

25 MR. MALLORY: Yes, I'll start with a short  
26 statement.

27 My name is Richard Mallory, the Director of the  
28 Department of Housing and Community Development.

1 I have been a Californian since 1973. I sort of  
2 consider Fresno to be my hometown in California. I was married  
3 there in '74, and graduated from California State University at  
4 Fresno in 1975, and all my children were born there in Fresno.  
5 So, I consider that to be my hometown.

6 I have lived here in Sacramento since 1986. I  
7 moved here when I was appointed to the position of State  
8 Director of Farmers Home Administration, a federal branch of  
9 USDA which was involved with lending in housing, rural housing  
10 primarily, farming and community development. I think that is  
11 probably the most notable part of my resume.

12 You may want to take a look at it as you scan  
13 through, but I had spent six-and-a-half years involved in that  
14 program, which really loaned and guaranteed loans in excess of  
15 \$100 million a year in rural housing in California. A lot of  
16 the farm labor housing that is constructed here in the state was  
17 a result of a partnership between Farmers Home Administration  
18 and HCD. And I was real pleased with that.

19 I think if there was one notable accomplishment  
20 throughout my term of service at Farmers Home Administration,  
21 I'm real proud of the resources that we were able to bring to  
22 bear in terms of making affordable housing here in the state.

23 You probably note that in 1993, I left that  
24 position and worked as a consultant in the private sector in  
25 management consulting. I had worked with Sacramento County, and  
26 worked with a number of private and nonprofit entities in  
27 consulting and helping them to develop management systems.

28 There are several things, the reasons that I'm

1 real pleased to be in the position that I'm in and would like to  
2 continue, I obviously have a personal background in housing.  
3 I have an interest in issues, and I have a belief that I can  
4 contribute to the welfare of our state.

5 People who know me would tell you that I believe  
6 in treating all people with dignity and respect. I believe in  
7 providing fair and equal treatment for all people and all  
8 groups. I listen carefully before I act. I always look for  
9 both sides of issues. I'm real strong on trying to build  
10 consensus wherever that's possible. In more cases than not,  
11 that is possible. And I believe real strongly in exercising the  
12 power the official office with great dignity and respect.

13 It has been an honor to serve this state for the  
14 past year. I would ask your support to continue in the role of  
15 Director for 1998.

16 CHAIRMAN LOCKYER: Thank you.

17 Are there questions from Members?

18 Let me start -- there's a number of issues  
19 indicated -- but dealing with alien reverification process.

20 MR. MALLORY: Yes, sir.

21 CHAIRMAN LOCKYER: I understand the federal law  
22 prohibits housing subsidies for undocumented.

23 I guess that the question has to do with whether  
24 we should adopt regulations or wait for the federal government  
25 to promulgate some.

26 Do you have any thoughts about that matter?

27 MR. MALLORY: Actually, the federal government  
28 did publish, on November 17, regulations for use by federal

1 agencies. They had promised and are past due in a statutory  
2 deadline to provide similar guidance to states and local  
3 entities.

4 But I think the regulations that were published  
5 November 17 gave us plenty of adequate guidance in terms of what  
6 the Attorney General, the U.S. Attorney General feels is  
7 appropriate.

8 CHAIRMAN LOCKYER: It points out that 49 states  
9 haven't gone forward to implement. They seem to be waiting for  
10 something more certain than interim regs from the feds.

11 MR. MALLORY: Well, there's two sides of every  
12 story. I think the one side is that the federal regulations,  
13 the federal requirement was put together as part of the Welfare  
14 Reform package. Part of the Welfare Reform package, as you know  
15 well, is trying to transition people from welfare to work.

16 And I think that the intent of the law is to try  
17 to help that happen. In other words, people who are eligible  
18 for employment here in the United States probably ought to have  
19 the highest priority for those units. So, I think in that  
20 sense, it probably is going to be helpful to an awful lot of  
21 people.

22 We do have at least 40,000 Californians on  
23 waiting lists for housing throughout the state, and they deserve  
24 some consideration as well.

25 CHAIRMAN LOCKYER: Senator Hughes.

26 SENATOR HUGHES: I have a question. My question  
27 is about HCD draft regulations that says that every member of a  
28 family must be deemed eligible upon receiving an application for



1 a new lease, and again each year after renewing this lease.

2 That poses some confusion for me as I look at  
3 what the federal regs are and what your regs are.

4 Then it says that if a family is deemed  
5 ineligible, the family is rejected for housing or for living in  
6 this housing, would then have six months to vacate. And there's  
7 an appeal process that could overturn this and delay an eviction  
8 order.

9 But then, when you look at HUD subsidized  
10 housing, it only requires that all adults must prove eligibility  
11 and says nothing about this other business, about the other  
12 adults being eligible, and the possibility of the family being  
13 ejected.

14 Could you sort of the clear that up?

15 MR. MALLORY: Sure. I understand what you're  
16 getting at, and we're trying to be very sensitive to the people  
17 that are in units now. We are definitely trying to be very  
18 consistent with what the federal government does.

19 I have, obviously, some experience in my USDA  
20 days, that we administered a housing portfolio that was  
21 federally based.

22 The comment that you made about an annual  
23 certification is something that's normally done anyways, because  
24 the housing is based on income eligibility, so there's an annual  
25 income eligibility.

26 I think when we wrote our original regulations,  
27 we thought it was best to keep the alien verification that took  
28 place as part of a routine process, instead of setting up some



1 extraordinary or adverse process. We just figured the easiest,  
2 simplest way was to, on an annual income verification, to ask  
3 for either legal citizenship status or nationality status.

4 I said in my opening remarks that we have taken  
5 pains to listen to all groups and try to develop things that are  
6 consistent with as many requirements as we can. We try not to  
7 be disruptive. I think we tried that in our initial regs. We  
8 had workshops with advocate groups and housing groups prior to  
9 even writing our draft regs. And it was never really brought  
10 up that that would be much of a major problem until after the  
11 draft regs were published.

12 When they were, in fact in the last hearing we  
13 had -- we had a series of three hearings on the regulations --  
14 in the last hearing we held, it was brought up that there may be  
15 a number of instances where we would, in effect, be denying  
16 benefits to citizens because perhaps one member of a household  
17 would be ineligible.

18 So, we are actively looking at some alternatives,  
19 perhaps as HUD does. I understand they just adjust the rent for  
20 ineligible recipients and leave it at that. So, that would be  
21 one option that we are definitely going to look at before we  
22 republish revised regs for implementation.

23 SENATOR HUGHES: When are you planning on having  
24 your regs revised for implementation?

25 MR. MALLORY: We are actively working on them  
26 now. I think last hearing we had was November 13, and we got  
27 over 100 comments, I believe, so we are going through and  
28 analyzing those comments.

1 I would presume maybe within four weeks we could  
2 republish something.

3 SENATOR HUGHES: Now, I get confused on what  
4 happens to those properties that are jointly funded by HUD and  
5 HCD, and they have one set of regs, and you have another set of  
6 regs? How do you rectify all of that?

7 MR. MALLORY: That won't happen. In our regs, we  
8 identify that any existing federal process for verification will  
9 be recognized. We do not want to create complexity or problems  
10 for housing operators. We just simply wanted to have a set of  
11 verification process in place for every given project.

12 SENATOR HUGHES: Then are you going to be picking  
13 up on what HUD's eligibility requirement is when it requires all  
14 adults to prove their eligibility, not children, in this other  
15 instance? Are you going to try to turn it around that way to  
16 clarify it, and then make it compatible with the fed?

17 MR. MALLORY: I cannot tell you right off what  
18 we're going to do because we're still looking at them.

19 Part of the whole legal issue, I think we started  
20 out saying that it was more or less a contract issue. In other  
21 words, we had a number of people who are jointly sharing a  
22 household and providing income.

23 All the people normally who provide income are  
24 asked to sign on the lease, so we felt that the most appropriate  
25 way in our draft regs was to ask for everybody who was signed on  
26 the lease to verify their citizenship or residency. So  
27 normally, even in our original regs, that would have excluded  
28 children. People who are not income earners would have been

1 excluded.

2 It's been, again, pointed out to us that perhaps  
3 we ought to treat or could easily treat existing residents  
4 different from new applicants. In other words, for new  
5 applicants, I don't think anybody I've talked to has any  
6 problems with saying every income earner ought to verify  
7 citizenship or legal residency.

8 But the question is, would it be very disruptive  
9 and create costs that were not equal to benefits to apply this  
10 unilaterally to all existing residents. I think we're thinking  
11 that that's true.

12 We've also said that we're going to make our  
13 final regs consistent with what the California Housing Finance  
14 Agency does in terms of its regs. So, what we're shooting for  
15 is a -- and what I consider to be good government -- a simple  
16 industry-wide standard that doesn't add any complexity or burden  
17 on private operators but accomplishes the purpose of the law.

18 SENATOR HUGHES: Under the Federal Welfare Reform  
19 law, nonprofit agencies that operate housing projects are exempt  
20 from the requirement that they verify their tenants'  
21 eligibility. In the absence of federal regs, it appears that  
22 this means the tenants generally are exempt from verification  
23 requirements.

24 Is that true?

25 MR. MALLORY: The November 17 federal regs that I  
26 mentioned earlier do line up with that interpretation, that any  
27 sponsor of a housing project that is a true charitable nonprofit  
28 appears to be exempt.

1           We would recognize that in our final regs, that  
2 they would be exempt.

3           I think the stickier question comes in when those  
4 nonprofits have entered into business arrangements for the  
5 purpose of securing tax rights and have established limited  
6 partnerships which are indeed for-profit. And I think feeling  
7 is that those are probably restricted by the law and ought to be  
8 subject to verification.

9           SENATOR HUGHES: Didn't your original HCD draft  
10 regulations attempt to circumvent this intent?

11          MR. MALLORY: No, I don't think we attempted to  
12 circumvent it. A lot of these things are fairly legally  
13 complex.

14          What we attempted to do was say, if nonprofits  
15 did not have an affirmative responsibility under the law, and if  
16 they did not have resources to do that, then we as a department  
17 could offer to take on that role for them.

18          We were not sure at that point that that absolved  
19 them of the legal responsibility.

20          I think it's still legally questionable, except  
21 in the federal regulations it's quite clear that the federal  
22 regulations state that they are to be exempt.

23          I think we will definitely recognize that for the  
24 purpose of national uniformity and the purpose of  
25 administration.

26          SENATOR HUGHES: That's the intent?

27          MR. MALLORY: Yes.

28          SENATOR HUGHES: Can you assure that the tenants



1 of nonprofits at least might face some less burdensome process  
2 than the tenants of profit-making businesses?

3 MR. MALLORY: Oh absolutely.

4 SENATOR HUGHES: How serious and how well  
5 acquainted are you with the unmet needs for affordable housing?  
6 I certainly have a massive problem in my district, and probably  
7 some other Members around this table might have it.

8 How do you feel about it? Do you believe that  
9 the figures that are published are really valid --

10 MR. MALLORY: Oh, yes.

11 SENATOR HUGHES: -- and reliable? And what do  
12 you think your agency's efforts should be in terms of making  
13 affordable housing available to people?

14 MR. MALLORY: We are very definitely committed to  
15 trying to expand the amount of housing supply through whatever  
16 means we can possibly do so.

17 SENATOR HUGHES: What are your plans in that  
18 regard?

19 MR. MALLORY: We have already initiated a better  
20 information effort to publicize the figures that we speak of.  
21 I, for example, can tell you what I have told many audiences  
22 throughout the state. I don't think it's widely recognized that  
23 between 1970 and 1980, the rent overburden rate within the State  
24 of California roughly doubled, and the overcrowding in housing  
25 roughly doubled.

26 It roughly doubled again between 1980 and 1990,  
27 to the point that, I'm aware, Senator, that in Los Angeles -- in  
28 fact, my fear is that by the year 2000, literally 50 percent of



1 the apartment units in Los Angeles could be overcrowded by the  
2 HUD definition. And I recognize that that's not a good social  
3 environment for California. It's not a good environment for  
4 families. It's not a good environment for businesses.

5 SENATOR HUGHES: Right now, some of these are  
6 overcrowded merely because there's not particularly one tenant  
7 in these housing developments, because in many instances, they  
8 do something called hot-bedding. You know, one family works at  
9 night; other family works in the day. They take turns  
10 sleeping.

11 And the poor children, where there are children  
12 involved in these units, are evidenced as not having good  
13 rest. The next day they come to school because they haven't  
14 slept in a bed. Maybe they have to sleep on the floor, and all  
15 of these things. It's just a horrifying situation.

16 MR. MALLORY: I think, number one, we have to  
17 publicize the problem. I think because it's not well  
18 publicized, a lot of communities have not identified it as a  
19 serious need, but I think certainly we're going to pay the price  
20 in lots of ways if we don't have, well, supportive family units  
21 within California, and housing is another integral part of that.

22 I know Santa Clara Valley that the industry group  
23 in Santa Clara Valley has become actively involved in housing  
24 over the past few years because they've come to identify that  
25 they cannot attract the people that they want in the industry.  
26 I think they say something like, they are only successful  
27 recruiting about one-fifth of the time the candidates that they  
28 want.

1               Likewise, the people who work in industries,  
2 especially among the median and below median wages for the  
3 industry, are having to commute many, many miles over to the  
4 Central Valley, basically, to be able to afford housing. So it  
5 even has pollution consequences on it. There's consequences on  
6 demand for road and public transit.

7               It's a delicate balance, but we've committed to  
8 try to do a variety of things. Number one, get better use of  
9 the resources that exist. That would be largely redevelopment  
10 agencies have, in many cases, significant resources to use.  
11 Being advocates for the best use of housing and for new  
12 resources, I think we've tried to do that both within the  
13 budget process and by working with TCAC and others.

14              We have manufactured housing, I think, as a real  
15 viable alternative. Just make communities aware of their  
16 housing element requirements so they plan for growth. I think  
17 this is a key piece of the equation.

18              Basically, we're fighting scarce resources to try  
19 to address a very difficult problem, but I'm committed to do  
20 that.

21              SENATOR HUGHES: What's your highest priority in  
22 restructuring or resurrecting the housing element process?

23              MR. MALLORY: My highest priority basically is  
24 just to get a cycle of the process completed in the ordinary  
25 fashion in which it was intended under law.

26              The Southern California area is next by law, by  
27 June 30, '99. Each one of the communities in the Southern  
28 California Association of Governments area is responsible for

1 completing a housing element. We've been actively working with  
2 the Southern California Association of Governments, SCAG. We  
3 have been having individual meetings with communities. I've  
4 spoken to the Orange County Planning Association.

5 We are trying -- we have gone through a  
6 streamlining process. Staff at HCD has streamlined the housing  
7 element process to make it easier and less burdensome for local  
8 communities, so we're trying to make the process work that  
9 way.

10 SENATOR HUGHES: Thank you.

11 CHAIRMAN LOCKYER: Other questions? Senator  
12 Ayala.

13 SENATOR AYALA: I just have one short question.

14 I'm not clear whether you've established that  
15 regulations will not be formulated to evict eligible candidates  
16 because members of the family may not be eligible. Has that be  
17 established that regulations are going to occur in that fashion?

18 MR. MALLORY: Are you speaking to the alien  
19 verification issue?

20 SENATOR AYALA: Yes.

21 MR. MALLORY: We are basically looking at the  
22 issue. That certainly when we published our draft regulations,  
23 that was one of the key interest areas of the various groups  
24 that responded to it.

25 We are certainly going to do our best to create a  
26 less burdensome process than was first proposed in the regs.  
27 And the manner in which that would happen, we are looking to, in  
28 the revised regs that would be published perhaps within four

1 weeks, establish a two-part process whereby residents within  
2 housing today would have a different standard than those who  
3 could come to us --

4 SENATOR AYALA: That's forthcoming?

5 MR. MALLORY: That will be forthcoming, correct.

6 SENATOR AYALA: Thank you.

7 SENATOR LEWIS: Any other questions?

8 Is there a motion on this confirmation?

9 SENATOR AYALA: So move.

10 SENATOR LEWIS: Call the roll, please.

11 SECRETARY WEBB: I think Senator Lockyer wanted  
12 to ask some questions.

13 SENATOR LEWIS: I apologize.

14 Is there anyone in the audience wishing to  
15 testify in favor of the confirmation?

16 MR. BROWN: Very briefly, Marc Brown, California  
17 Coalition for Rural Housing in California, Rural Legal  
18 Assistance Foundation, here to support the confirmation of  
19 Richard Mallory as Director of the Department.

20 On a number of occasions over the last year,  
21 we've had occasion to work with him for self-help housing. He  
22 was very effective in supporting our efforts to get the budget  
23 augmented for self-help housing, and that was done and is now  
24 actually part of the Governor's budget.

25 In the farmworker housing grant program,  
26 Mr. Mallory was effective as well at helping us get the  
27 Governor's approval of four-and-a-half million dollars for that  
28 very much needed program.



1           Last year, following the floods up in the  
2   Yuba-Sutter area, Mr. Mallory approved our request to take a  
3   tour of that area with the Director of the Farmers Home  
4   Administration, and ultimately was helpful in getting funding  
5   for that program.

6           On the alien verification issue, we, I guess, had  
7   differences with the original regs that came out that were very  
8   much a concern. The commitment that we understand we have with  
9   the Director is that the Department of Housing will move  
10   consistent with California Housing Finance Agency. The Housing  
11   Finance Agency is waiting to see what comes down in terms of  
12   federal mandates and requirements on this issue. And as we  
13   understand it, the Department is in that same position. It  
14   gives us some more comfort that we're not going to be  
15   immediately facing eviction of thousands of people out of their  
16   housing..

17           So in quick summary, our position is support.  
18   Thank you.

19           SENATOR LEWIS: Thank you.

20           Next witness.

21           MS. MINNEHAN: Christine Minnehan, Western  
22   Center on Law and Poverty.

23           We, too, are here in support of the confirmation  
24   of Mr. Mallory. We had occasion to work with him very closely  
25   last year on a piece of legislation that Senator Barbara Lee was  
26   carrying that would provide a housing program to move welfare  
27   recipients from welfare to work. It was imaginative; it was  
28   creative, and Mr. Mallory went out aggressively and worked on



1 our behalf, augmented some of the ideas, and ensured that we  
2 worked closely with the administration. And in fact, is  
3 assisting us in augmenting the 5 million rather than settling  
4 for a dollar amount that really doesn't respond adequately to  
5 this very rapid move from welfare to work.

6 Mr. Mallory very recently negotiated, tough,  
7 hard, on what constitutes an adequate response to the Employee  
8 Housing Act. It was a tough negotiation, but at the end of the  
9 day, I think we came away with a sense that farmworker  
10 population was indeed protected, and that the Department had not  
11 only been willing to listen to us, but had been willing to  
12 strike language that was in fact workable.

13 My colleague, Marc Brown, expressed the concern  
14 that I've heard here from the Committee relative to the alien  
15 verification regs. That was, of course, the first issue out of  
16 the Department that caused some real anguish on the parts of  
17 many of the low-income housing providers that we work with.

18 But we feel satisfied with the Director's  
19 repeated commitment that he will work in step with the  
20 California Housing Finance Agency. We've also worked with Ms.  
21 Terry Parker over there on this issue. We feel some assurance  
22 based on that, that we won't see the wholesale evictions that we  
23 were originally concerned about.

24 Thank you.

25 MR. HERALD: I'm Michael Herald. I'm the  
26 lobbyist for Housing California, a statewide coalition of  
27 nonprofits and homeless advocates.

28 We, too, come today to support the nomination of

1 Mr. Mallory as the Director of Housing and Community  
2 Development.

3 I do want to say, though, that my board did wish  
4 me to express that we do have some concerns. You've voiced many  
5 of them already, particularly the immigrant verification  
6 regulations.

7 We are pleased by the movement of the Department,  
8 however, in the direction of our stand on these regulations, and  
9 think that progress has been made, and we look forward to the  
10 release of the next version of these regulations.

11 Two other issues, I just quickly want to note for  
12 the Committee, that have been of some issue of concern for us.  
13 One is that the Governor's position not to continue the use of  
14 National Guard Armories as winter shelters.

15 I want to note, though, for the record that when  
16 the Legislature, by a two-thirds vote, passed an authorization  
17 of \$1 million to fund those armories through the Department's  
18 Emergency Housing Assistance Program at a very critical  
19 juncture, leaving less than a month to get those armories up and  
20 open, get the contracts out, the Department was able to  
21 accomplish that task. I think that's a credit to Mr. Mallory  
22 and his insistence that those funds get spent and used in a very  
23 quickly and important fashion.

24 However, we would like to see the Director and  
25 the Department to take a more long-term role in helping local  
26 communities and the state figure out permanent solutions and  
27 alternatives for those armories. And to date, we've seen  
28 nothing in the Governor's budget or any other matter that would

1 suggest that the Department is going to be taking a lead role in  
2 that matter.

3           Then lastly, the Department administers another  
4 federal program called HOME, which is a federal -- it's a  
5 funding stream from the federal government. The Department  
6 manages this program for rural areas of California, those cities  
7 that don't get direct funds.

8           There's one issue that's been of nagging concern  
9 to some nonprofits, and that is the Department's long  
10 requirement that proceeds from loans and grants that go out to  
11 nonprofit organizations, when they're returned and repaid by  
12 people in the community who purchase housing, that those funds  
13 would have to be returned to the state rather than to stay  
14 locally with the nonprofit organization, as was intended by  
15 Congress and is provided by in federal law.

16           So again, we would encourage the Department to  
17 continue to work with us on that, but we do support the  
18 nomination of Mr. Mallory and urge you to confirm him.

19           MR. CARTER: Mr. Chairman and Members, Art  
20 Carter representing the California Pipe Trades Council.

21           I might remind you of a line out of Macbeth  
22 [sic], we come here neither to praise nor bury Caesar.

23           We are here neither in opposition nor support of  
24 Mr. Mallory. As the Committee considers his confirmation, there  
25 is one issue that California Pipe Trades Council has been long  
26 involved in. I refer to the issue of, generically, plastic CPVC  
27 pipe.

28           It is currently the subject of an environmental



1 impact report process by the Housing and Community Development  
2 Department, which Mr. Mallory heads.

3 During recess, we had a working meeting with  
4 Mr. Mallory and his staff. Rather than my doing so, I'm going  
5 to call upon an associate of mine, Mr. Dan Cardoza, who's an  
6 attorney for the Pipe Trades, to very briefly outline a couple  
7 of the procedural questions that are of deep concern to us.

8 Mr. Cardoza.

9 MR. CARDOZA: Thank you, Mr. Chairman, Senators.  
10 Dan Cardoza, speaking on behalf of the Pipe Trades Council.

11 As Mr. Carter indicated, the Pipe Trades have a  
12 long-standing concern with regard to the public health and  
13 worker health issues associated with CPVC pipe. The studies  
14 that were prepared in the previous EIR process, back in 1989 by  
15 HCD, confirmed that there were indeed some serious public and  
16 worker health issues with respect to potential drinking water  
17 contamination and worker exposures to toxic and carcinogenic  
18 solvent chemicals.

19 Those issues remained unresolved in the prior EIR  
20 process because in 1994, the plastics industry withdrew funding  
21 to complete the studies, and HCD terminated the EIR process.  
22 The next year, in 1995, Governor Wilson met with Goodrich  
23 officials in Ohio during the Governor's presidential campaign.  
24 And he was asked in those meetings to approve CPVC pipe by what  
25 the Goodrich officials described as "edict", and within one  
26 month of that request, the Governor directed HCD to adopt  
27 emergency regulations approving CPVC pipe.

28 That approval was later overturned by the courts



1 for failure to complete the EIR process, and HCD is now under  
2 way with a new EIR process to complete the earlier studies  
3 essentially by court order.

4 Despite this fact, we're concerned because the  
5 Governor and administration officials are repeatedly on record  
6 indicating that they do not believe that there are legitimate  
7 health and environmental issues associated with the pipe.

8 We're concerned that this attitude may result in  
9 less than a thorough review, and that concern is reinforced by  
10 internal HCD documents which, in our view, indicate a strategy  
11 to fast-track the process and not to allow the analysis to  
12 interfere with the stated objective, to approve CPVC pipe by the  
13 fall of this year.

14 HCD had confidential strategy meetings with  
15 Goodrich representatives in which they decided that, unlike the  
16 previous time, there would be no industry funding for the EIR.  
17 The EIR process would be funded by the taxpayers. That there  
18 would, unlike the prior time, there would be no use of outside  
19 independent consultants, but all of the work would be done  
20 in-house.

21 SENATOR HUGHES: Might I ask the witness a little  
22 question.

23 You know, I remember it was the '80s, early '80s,  
24 when they started talking about plastic pipes being much safer  
25 and much better.

26 Is there any plastic piping installed now, or  
27 approval for plastic piping installed in residential facilities  
28 now?

1 MR. CARDOZA: There were some limited approvals  
2 authorized by a bill authored by Assemblyman Baca in 1995 which  
3 allowed a two-year window for approval of CPVC installations in  
4 jurisdictions which could demonstrate that there were problems  
5 with the corrosion of copper pipes, but the bill also required  
6 a set of worker safety protections, as well as drinking water,  
7 flushing protections.

8 SENATOR HUGHES: Are these purifiers that attach  
9 to the faucets, do they guarantee any safety? You know, I'm  
10 thinking even in a building, it could be a commercial building  
11 where construction workers would want to get a drink of water.  
12 I'm not talking about just the water fountains.

13 Are these purifiers any guarantee that it's going  
14 to make the water safe for drinking, because everybody  
15 advertises that these things are okay.

16 MR. CARDOZA: In the view of our technical  
17 consultants, the type of chemicals that we're talking about  
18 leaching into the drinking water, especially the pre-occupancy  
19 water at the construction sites that you're referring to, are  
20 not addressed by the commercial filters that are available in  
21 the marketplace. Usually we're talking about chloroform and  
22 solvent chemicals that are not filtered out by the kind of  
23 coarse filters that are available in the market.

24 CHAIRMAN LOCKYER: Senator Ayala.

25 SENATOR AYALA: Somebody get me on board. I  
26 don't understand.

27 The Department of Housing and Community  
28 Development is to expand housing opportunities all

1 Californians.

2           Where do you get the authority to get involved  
3 with material that's going to be used on housing? I mean,  
4 that's up to the Building Code, and the inspectors, and local  
5 government. They're the quality control people at the local  
6 level.

7           How do you get involved with that? I don't  
8 understand this pipe business coming up at the last moment here.

9           MR. MALLORY: Statutorily, we are required to  
10 make recommendations to the Building Standards Commission on  
11 changes to the California Building Codes.

12           SENATOR AYALA: You don't enforce those  
13 regulations.

14           MR. MALLORY: No. The local entities enforce  
15 those. We merely make recommendations to the Building Standards  
16 Commission.

17           SENATOR AYALA: I don't understand the pipe  
18 business coming up at the last minute.

19           MR. MALLORY: Would you like me to address that?

20           SENATOR AYALA: I was under the impression that  
21 those were created elsewhere, and you would either support or  
22 not support for enforcement at the local level.

23           Quality control of housing is the responsibility  
24 of local governments.

25           MR. MALLORY: Correct.

26           SENATOR AYALA: Not your Department or anybody  
27 else's.

28           I don't know why the pipe business got involved

1 here at the last minute.

2 MR. MALLORY: The local entities operate under  
3 building standards adopted by the State of California, adopted  
4 by the Building Standards Commission.

5 There are several -- and I'm certainly not an  
6 expert on this subject, Senator, but I can tell you that I'm  
7 aware that there are a number of national bodies, professional  
8 bodies that make code recommendations. And the recommendations  
9 come to the state, and they're adopted in a triannual process.

10 The agency that is charged with reviewing most --  
11 although there's probably about seven different departments that  
12 preview portions of building codes -- we are charged with  
13 reviewing most of the construction standards, of which pipe  
14 would normally be part.

15 SENATOR AYALA: You can make recommendations.

16 MR. MALLORY: Right.

17 SENATOR AYALA: But you're not in the business of  
18 enforcing any of those regulations.

19 MR. MALLORY: No.

20 MR. CARDOZA: Mr. Chairman, I could wrap up very  
21 quickly.

22 In response to our criticisms that the Department  
23 doesn't have the in-house expertise to conduct other than a pro  
24 forma review, the Department's indicated that it would rely on  
25 state experts.

26 We're concerned that without identifying who the  
27 state experts would be, how their time would be funded in the  
28 current state budget, whether or not the state staff people



1 would be allowed to review the underlying original technical  
2 documents and not just review drafts of the EIR, without  
3 assurances that the state experts would review and respond to  
4 the comments, the public comments submitted on the EIR, we're  
5 concerned that there wouldn't even be the appearance of a  
6 legitimate and meaningful review process.

7 In our view, the administration may very well  
8 approve CPVC pipe this year, but we don't think that approval  
9 should come until there's been a genuine, meaningful analysis  
10 and full public disclosure of the issues and risks associated  
11 with the pipe.

12 Thank you very much.

13 SENATOR BRULTE: I just want to be real clear  
14 here.

15 You mentioned that Governor, while he was running  
16 for President, met with Goodrich. That was just to give us a  
17 point of reference in time, was it not? You weren't suggesting  
18 there was anything related there?

19 CHAIRMAN LOCKYER: I would suggest it if he.  
20 doesn't.

21 SENATOR BRULTE: I'd like to hear it on the  
22 record because my follow-up question will be, Mr. Baca wasn't  
23 running for president when he introduced legislation to do what  
24 you think the Governor wants to do.

25 CHAIRMAN LOCKYER: I don't know if you've seen  
26 it, but the Goodrich letter, which we have a copy of, starts by,  
27 "It was delighted to meet you at your fundraiser in Ohio," and  
28 we have this concern that was policy developed by Democrats that

1 preceded you, and it's unions that prevent a change that allow  
2 us to market plastic pipe; and we'd like you to change it by  
3 edict.

4 SENATOR BRULTE: I understand, though I'd still  
5 like to ask the witness what --

6 MR. CARDOZA: I believe, Senator, that the  
7 chronology speaks for itself.

8 SENATOR BRULTE: Now, you don't believe the state  
9 employees are qualified to do this?

10 MR. CARDOZA: We believe that there is expertise  
11 in state government; however, the Department has not indicated  
12 who these experts are.

13 Our concern is that there be a genuine process.  
14 We believe if the experts in state government are specifically  
15 identified, if there's funding available to indicate that they  
16 will in fact have the time to devote to this, if they will be  
17 allowed to review the underlying technical documents, if they  
18 will review the public comments and respond to them, then we  
19 believe that there is adequate expertise and that would be  
20 indicative of a meaningful review.

21 SENATOR BRULTE: So, you don't necessarily want  
22 us to go outside and privatize this EIR function?

23 MR. CARDOZA: If we could dictate the process, we  
24 believe that outside independent consultants are the best way to  
25 assure an objective and careful analysis. We think the  
26 Department's committed to doing this as an in-house process, and  
27 we're not opposing that.

28 SENATOR BRULTE: You think outside employees

1 doing those studies are the best? Is that just related to pipe,  
2 or is it to every other function of analysis of state  
3 government?

4 MR. CARDOZA: I think -- I mean, a typical way  
5 that an EIR process is conducted, especially in a highly  
6 technical area like this one, is that the applicant funds the  
7 technical studies which are typically prepared by outside  
8 technical consultants. That's the process the Department  
9 followed in 1989. This time they're not following that process.

10 We are just seeking assurances that there will be  
11 a genuine and careful review of this by state experts.

12 SENATOR BRULTE: Okay.

13 CHAIRMAN LOCKYER: Do you have a tentative  
14 deadline for concluding this debate on plastic pipe?

15 MR. MALLORY: I wouldn't say concluding the  
16 debate, but hopefully completing the EIR.

17 The EIR is projected to be finished by about  
18 April, maybe about April 30th. It would be in draft form, and  
19 then our timeline if -- again, it depends on the analysis. If  
20 we do indeed do a review of the professional studies that are  
21 available, and I know that the Pipe Trades Council is  
22 particularly concerned with worker safety, much more so, I  
23 think, than just the quality of the drinking water, but in  
24 either case, we are going to review all the available  
25 professional studies on that.

26 If we assess that there is significant debate or  
27 risk that has not been investigated, then at that point we would  
28 make a determination whether we needed additional studies of any

1 kind and who would be appropriate to do that.

2 If we do not make such an assessment, it's  
3 possible that the final EIR would be ready this fall, which I  
4 might say is a timeline that's consistent with professional  
5 standards. It's not faster nor slower. It's considered to be  
6 an industry standard for preparation of an EIR.

7 CHAIRMAN LOCKYER: Thank you.

8 MR. PATTON: Mr. Chairman and Members, Gary  
9 Patton for the Planning and Conservation League.

10 We're appearing on this issue as well. We  
11 actually were one of the litigants in the earlier lawsuit that  
12 Mr. Cardoza just mentioned. We're quite concerned about the  
13 consumer safety, water quality issues relating to plastic pipe.

14 As all Members of this Committee know, as persons  
15 come before you for confirmation, you often use the opportunity  
16 to delve a little bit deeper into specific programs of specific  
17 concern to Members of the Committee, as Senator Hughes was just  
18 doing about one that I personally care about as well.

19 This is one we'd like to alert you to. We do  
20 think it is important that the EIR process really get to the  
21 bottom of the issues, because the whole problem that led to the  
22 litigation before was a truncated EIR process that wasn't  
23 exhaustive enough so that at least we, in the environmental  
24 community, and certainly the labor folks involved, didn't  
25 believe it was a fair evaluation.

26 And we're hoping you can get a commitment from  
27 Mr. Mallory in connection with his confirmation to a really  
28 written down set of procedures: who is going to do the work;



1 how long is it going to take, in terms hopefully of an  
2 accelerated -- of a process that would result in the deadline  
3 he's talking about, but with opportunities for comments, for  
4 instance, for say 60 days, giving us a real chance, looking at  
5 what comes out of the Department initially, to have a full and  
6 fair comment period.

7 That's the kind of thing I'm asking you to  
8 investigate as part of your Committee review. And really, we're  
9 taking no position on Mr. Mallory, and we appreciate some of the  
10 good testimony we've heard this afternoon.

11 Thank you for your interest in this  
12 issue.

13 CHAIRMAN LOCKYER: Mr. Mallory, you're confident  
14 that the EIR will be done in a way that comports with state  
15 standards, and that it will be a professional workup that's  
16 complete?

17 MR. MALLORY: You bet I am.

18 I might say that based on Mr. Cardoza's comment,  
19 I'd like to say that I was not here at the time that emergency  
20 regs were requested nor issued. I was not serving as Director  
21 at that time.

22 We did have some discussions. I did come aboard  
23 right after the court decision on requirement of an EIR. I did  
24 participate in the discussions about whether that should be  
25 appealed or not. I did recommend that it not be appealed, that  
26 we complete the EIR. The Governor agreed with that.

27 I am committed to a fair process. I have not had  
28 any, nor has any of my staff had, confidential strategy sessions

1 with Goodyear [sic]. I have had as many conversations with --  
2 and I believe this is true of my staff as well -- with anybody  
3 representing Goodrich, rather, the manufacturer of the pipe,  
4 than as I have with Pipe Trades Council.

5 So, we intend and are committed to having a very  
6 fair and open process that complies with the law.

7 And frankly, in regard to the last comment, there  
8 will be a fair and open comment period when the EIR is  
9 completed.

10 CHAIRMAN LOCKYER: So, you have the draft that  
11 gets generated, and then there's some internal review. Is that  
12 what happens next?

13 MR. MALLORY: There would be an internal review  
14 prior to the issuance of the draft EIR with whatever  
15 recommendations we feel is appropriate.

16 CHAIRMAN LOCKYER: So, that's happening now?

17 MR. MALLORY: Correct. Well, the draft  
18 recommendations are being put together.

19 CHAIRMAN LOCKYER: I don't understand the time.  
20 You have your internal review before the draft EIR is  
21 promulgated?

22 MR. MALLORY: Staff basically completes the  
23 assessment of risks and review of professional materials. They  
24 present to me a recommendation, which I review for technical  
25 completion, for its merits, for compliance with the requirements  
26 of the law, and then I would issue a recommendation on the draft  
27 basis. At that point it is recirculated to the interested  
28 community.

1 CHAIRMAN LOCKYER: You just mentioned that's late  
2 April?

3 MR. MALLORY: That would be a target, yes.

4 CHAIRMAN LOCKYER: So tell me, when do those  
5 different steps occur? Have you gotten the staff technical  
6 counsel yet?

7 MR. MALLORY: Yes. We have a lead resource  
8 person on the EIR, and that person working literally full-time  
9 on the project now.

10 CHAIRMAN LOCKYER: Are there other state experts  
11 that are associated with that analysis?

12 MR. MALLORY: Not that have been spending much  
13 time with it, but yes, there are other state experts involved.

14 CHAIRMAN LOCKYER: But principally that one?

15 MR. MALLORY: Principally the one person.

16 CHAIRMAN LOCKYER: Would that person also look at  
17 the professional literature on the topic?

18 MR. MALLORY: Correct.

19 CHAIRMAN LOCKYER: Any other underlying studies,  
20 or whatever might be associated with the risk assessments?

21 MR. MALLORY: Correct.

22 CHAIRMAN LOCKYER: You make a recommendation in  
23 late April, and then it recycles through the world of comment?  
24 Is that the next step?

25 MR. MALLORY: Then it's subject to public comment  
26 again, yes. And then all the comments would have to be  
27 responded to in terms of a final EIR. Analyzed and responded  
28 to.

1 CHAIRMAN LOCKYER: How long will the public  
2 comment period last?

3 MR. MALLORY: You know, I'm not sure of that. I  
4 believe it's 60 days, but I would have to get that answer back  
5 to you.

6 CHAIRMAN LOCKYER: Our note suggests that it's  
7 often 45, but we would urge 60 on you just as matter of this  
8 complexity. That 15 days probably isn't too much of a delay.

9 MR. MALLORY: Thank you.

10 CHAIRMAN LOCKYER: If you'd consider that,  
11 please.

12 Are there other questions?

13 Break down your time. How much of the day,  
14 month, or whatever, do you spend with different tasks that  
15 relate to pipe or other associated matters?

16 MR. MALLORY: Pipe is pretty small.

17 CHAIRMAN LOCKYER: Affordable housing, you know,  
18 mobilehome issues. Can you break it down in any way to give us  
19 a picture?

20 MR. MALLORY: Boy, I've been spending a lot of  
21 time with trying to do some staff development. We are involved  
22 with trying to build a team-based organization, so we've really  
23 been spending a lot of time trying to get focused on our key  
24 processes, and doing things like flow charting, of which we've  
25 had some pretty notable success.

26 So, I would say I've probably been spending about  
27 25 percent of my time just on building the organization as an  
28 unit and building the teamwork.



1 I would say probably next in order, we're working  
2 on trying to be leaders and policy makers for housing, for  
3 housing resources. And we are spending a significant amount of  
4 time on trying to communicate need and discuss with communities  
5 various options that exist. We are looking at -- you heard the  
6 comment about the Home Program. We are certainly looking at the  
7 Home Program and RDAs, best use of funds in those two  
8 activities.

9 I would say in what we call the Codes and  
10 Standards Unit, which is manufactured housing, we've had a lot  
11 of concern about the amount of time that has taken in terms of  
12 title transactions, and we've spent a fair amount of time at  
13 that.

14 I would say things like the actual code adoption  
15 process and things like plastic pipe are probably easily less  
16 than ten percent of my time.

17 CHAIRMAN LOCKYER: Homelessness?

18 MR. MALLORY: Homelessness is within the program  
19 availability area. I would tell Mike Herald, who was concerned  
20 that we provide some leadership there, that's certainly on our  
21 agenda for the next year.

22 CHAIRMAN LOCKYER: There seems to be some worry  
23 about the mobilehome park inspections being principally the  
24 responsibility of HCD rather than local agencies, whether it's  
25 done adequately or well in a cost effective way.

26 Have you had a chance to assess that program?

27 MR. MALLORY: Yes, we have. I am a strong  
28 believer in getting input from people who are directly involved

1 with the program. I was, in January, went to a meeting of the  
2 Western Mobilehome Park Owners Association. I spoke to the park  
3 owners. We ended our survey and said, what do you think? Is  
4 this thing a valuable process? What do you like? What don't  
5 you like? What can we do differently?

6 This Saturday, if I'm confirmed, I'm going to go  
7 visit with the Golden State Mobilehome Owners League and do the  
8 same thing -- those are residents -- and have same discussion.

9 I think there has been a significant amount of  
10 concern, but what I'm hearing is that everyone feels that --

11 CHAIRMAN LOCKYER: You can go Saturday whether  
12 you're confirmed or not.

13 [Laughter.]

14 MR. MALLORY: But in any case, we are going to  
15 ask them that. And what I've heard initially is that everybody  
16 thinks it's a good and valuable service. They would each like a  
17 little bit more attention to it from their own perspective, and  
18 we're going to attempt to do that in the next year.

19 CHAIRMAN LOCKYER: Yes, Mr. Carter.

20 MR. CARTER: Mr. Chairman, Mr. Mallory's comments  
21 are, frankly, helpful to us. And we met with him and his staff  
22 last week, so we think he's very helpful.

23 There are two things, however, I would appreciate  
24 you're keeping in mind, at least in writing to the Committee.

25 First, that the EIR comment period would be for  
26 60 days.

27 Secondly, and much more important to us, the  
28 names of the actual technical experts that HCD is using in the

1 various agencies to provide the review. That is important to us  
2 because, as he's indicated, the HCD opposition to doing an EIR  
3 preceded him. We do want to be sure that the process is using  
4 technical people so that we can know this.

5 We met last week. Unfortunately, he refused to  
6 give us the names. I find that kind of amazing because in the  
7 past history, we know the names of all the staff people who are  
8 working on any kind of policy legislation. We can have a good  
9 interchange.

10 The value for us of knowing who those technical  
11 people are is that, in the process of evaluating conflicting  
12 views as to what is necessary or not, you get a sense of their  
13 expertise.

14 I think those two things, if they could be done  
15 in writing to the Committee, would be very helpful to us.

16 CHAIRMAN LOCKYER: Can you respond on those  
17 matters? One is whether 60 days is acceptable.

18 MR. MALLORY: I'm reluctant to do that. I don't  
19 even have a legal opinion in terms of the comment period, and I  
20 would be hesitant to give you a specific number of days without  
21 referring to statute or precedence.

22 I feel I want to address Mr. Carter on the issue  
23 of who. I don't think we know yet. It depends as you go  
24 through the material, you ascertain who it is that has the  
25 knowledge that you need, and you contact those people based on a  
26 need and based on their expertise.

27 We have not identified yet who it is that we are  
28 going to utilize for various specific components.

1           The CEQA process, and the Committee may not know,  
2 the CEQA process is a self-correcting process. In other words,  
3 if there are gaps that we do not address, Mr. Carter gets two  
4 opportunities to point those out: number one, at the draft  
5 comment stage; and number two, after the completion of the final  
6 product.

7           If he's still dissatisfied, I know he's well  
8 aware he could take the matter to court and point out our  
9 deficiencies in court, and we're bound to do that.

10           CHAIRMAN LOCKYER: They did that once.

11           MR. MALLORY: Yes, but I'm sure he's not going to  
12 have that problem, number one. And number two, we don't know  
13 what the recommendation is besides. And number three, it's a  
14 self-correcting process. It's like turning in your homework.  
15 If you've done a poor job, the teacher knows when you hand it  
16 in.

17           The CEQA document requires that all the  
18 participants in the completion of the process be named when the  
19 final document is created. But the law does not specify, and I  
20 don't even think there's any precedent, for releasing names of  
21 people working on it as they're working on it.

22           We're certainly open to any submissions he wants  
23 to make because that's what the process is for. If they have an  
24 expert they'd like us to meet with, or like us to take data  
25 from, we would love to have it.

26           CHAIRMAN LOCKYER: Are there other questions from  
27 Members?

28           I'd suggest we put it over for two weeks. Put



1 the confirmation vote over for two weeks. We will be --

2 MR. MALLORY: That would be beyond --

3 MS. MICHEL: We could come back in on the 26th.  
4 We have until the 3rd.

5 CHAIRMAN LOCKYER: So, we'll talk then some more  
6 about legal counsel and what you've heard from them, okay.

7 Thank you, sir.

8 [Thereupon. This portion of the  
9 Senate Rules Committee hearing was  
10 terminated at approximately 3:55 P.M.]

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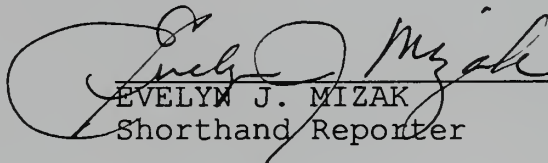
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SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

TOM ROSS, Consultant to SENATOR BRULTE

ALSO PRESENT

PHILLIP M. CHRISMAN, Member  
Fish and Game Commission

JIM EDMONDSON, Executive Director  
CAL Trout

BILL GAINES, Director of Government Affairs  
California Waterfowl Association

CHARLES BOCARIA, Conservation Vice President  
Northern California Council  
Federation of Fly Fishers



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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN LOCKYER: Mr. Chrisman and Senator.

SENATOR COSTA: Thank you very much, Mr. Chairman and Members of the Senate Rules Committee.

Actually, although it's not this item on the agenda, let me make note, there was request from Senator Ayala that an appropriate oversight committee be provided as our efforts to try to address many of the various governance issues affecting to some of the water agencies in Southern California.

The request has been made for such an appropriate oversight committee, and I have a letter submitted to Rules Committee concurring with Senator Ayala's request. I think it's appropriate and look forward to working with Senator Ayala on that effort. I just wanted to make note of that. The Rules Committee has my letter, and I've also conferred with Senator Ayala on the matter.

CHAIRMAN LOCKYER: It's Item Five. We'll get to it in a short time.

SENATOR COSTA: I'm here this afternoon primarily, Mr. Chairman, Members of the Rules Committee, to present to the Rules Committee Mr. Phillip Michael Chrisman, although I must confess, I have always known Mr. Chrisman as Michael Chrisman over the years, some 25 years now that we have known each other and worked together on a host of issues, from those involving the resources of the Central Valley, and agriculture, to dealing with public policy, both on the state level as well as interacting with the federal government as



1 well.

2 In the various capacities in which Michael  
3 Chrisman and I have participated in over the years, I have found  
4 him to be extremely competent, very capable, very sensitive to  
5 addressing issues of concerns by numerous parties. He has been  
6 an individual that is very adept to listening to all sides on a  
7 given issue. And he has conducted himself in that capacity over  
8 the years as he and myself and others have attempted to find  
9 solutions to problems that have presented themselves on  
10 primarily resources issues, although we have delved together in  
11 other issues as well.

12 Let me just finally say that the State Fish and  
13 Game Commission is historically an interesting commission in  
14 California's history. It is one of the few commissions that is  
15 actually written into the State Constitution. It goes back to  
16 the 1920s when there was really a separation in terms of how the  
17 department was governed and how oversight was provided.

18 Now, obviously, that has changed over the decades  
19 since the 1920s to present, and the role of Commission has  
20 reflected the appointment and the membership through various  
21 governors. But I think that for all of us who are concerned  
22 about protecting, maintaining, and mitigating resources in  
23 California, especially when we look historically back where  
24 damages have occurred to some of our valuable resources, it is  
25 important that we have people who not only understand the  
26 history but have the talent to bring consensus. I believe the  
27 gentleman next to me here has that ability to bring consensus.

28 He has only been on the Commission since last





1 year, but he has already attempted to try to request that they  
2 develop a strategic plan in evaluating and inventoring what the  
3 State of California's current resources are, and how we can,  
4 into the 21st Century, develop a plan that is suitable and that  
5 can be implemented to protect California's most valuable natural  
6 resources as we look at a state in the year 2025, with 50  
7 million people in it. And there are conflicts with the  
8 population growth of 17 million more people in 25 years when we  
9 talk about balancing the needs of our natural resources.

10 I think people like Mr. Michael Chrisman are  
11 certainly up to the job, and I would recommend him highly.

12 CHAIRMAN LOCKYER: Good afternoon.

13 MR. CHRISMAN: Good afternoon, Senator.

14 CHAIRMAN LOCKYER: Nice words.

15 MR. CHRISMAN: Thank you.

16 CHAIRMAN LOCKYER: Deserved, I'm sure.

17 Thank you, Senator.

18 Do you want to begin with any comment?

19 MR. CHRISMAN: Yes, I would, if I might,  
20 Senator.

21 I appreciate the opportunity, the courtesies  
22 afforded me, working with Nancy Michel and people on your  
23 staff.

24 I appreciate the opportunity to be here today and  
25 stand for confirmation.

26 I come from the southern San Joaquin Valley. I'm  
27 a fourth generation resident of the Valley, and I've spent the  
28 better part of my life dealing with natural resource issues,



1 both in the public and in the private sector.

2 Because of this, I've developed a strong  
3 conservation ethic, I think, with a pretty good understanding of  
4 natural resources, in particular fish and wildlife issues. I  
5 had the high privilege of serving for a number of years in the  
6 Resources Agency here, where I dealt with many of these similar  
7 issues.

8 I also had the opportunity to work at the  
9 Department of Food and Agriculture, and now I have the privilege  
10 of working back home in Visalia with Southern California Edison  
11 Company.

12 When I first came to the Commission, I asked to  
13 take a look at the strategic plans, the long-term plans that the  
14 Commission had developed, if they had developed them, to kind of  
15 give me a sense of what some of the priorities were, some of the  
16 issue priorities and others were. Turns out we had never done  
17 one.

18 So, since I've been on the Commission, under my  
19 leadership, we have instituted this process.

20 Why are we doing this? Well, as Senator Costa  
21 indicated, this Commission is an old commission. It's gone  
22 through a series of iterations over the years. It's in the  
23 Constitution. And this has all been happening at a time when  
24 the State of California has enjoyed a phenomenal population  
25 growth: 32 million people now, 42 million by the year 2015.  
26 And all of this, of course, has brought about an intense  
27 pressure on our natural resource base, the land, water, and the  
28 air, and of course, the fish and wildlife, increasing





1 responsibilities that have been given to us by the Legislature  
2 and the people of the State of California. All of this has  
3 joined -- has caused us to join and come together with a  
4 strategic plan.

5 We have started this effort. We are reaching out  
6 to other states. We've asked information from other states on  
7 their -- on how they've operated their commissions, experiences  
8 they've gained. We've asked for help from the U.S. Fish and  
9 Wildlife Service as they work with other states.

10 We also have taken a look at what the plan might  
11 be. Of course, any plan like this will have a mission and  
12 vision statement. We will identify certain priorities and  
13 programs, various action items and time lines.

14 One of the things we intend to do as this  
15 Commission as we get an initial document put together is to  
16 undertake some focus groups around the state. We will identify  
17 a number of areas where we'll go visit with a variety the  
18 stakeholder groups and ask for some more input.

19 We have had a couple of public hearings where we  
20 have gotten just tremendous input and tremendous commitment to  
21 help us try to redefine what this Commission is about.

22 In addition to the -- before the two public  
23 hearings, we identified a number of priorities. Priorities  
24 that, as a Commission, we needed to take a look at. One of the  
25 priorities, of course, was in the marine resources area, a high  
26 priority that the current director and her leadership team has  
27 indicated as a priority, and we're going to be indicating as  
28 such.



1           The State Endangered Species Act continues to  
2 always be a high priority. Communication roles and  
3 responsibilities -- Commission roles and responsibilities, I  
4 should say. Commission budgets, and of course the operation of  
5 the Commission itself.

6           What would I like to see out of the strategic  
7 plan? I would like to see a strong mission statement that  
8 articulates our trustee and stewardship responsibilities for  
9 fish and wildlife and plant species consistent with a continued  
10 fishing and hunting opportunities in this state.

11           I'd also like to see a clear vision that says  
12 we'll be anticipatory and pro-active in our decision making  
13 process.

14           I'd also like a clear statement and commitment to  
15 stakeholder interaction as an ongoing basis of our programs.

16           These are extremely challenging times in the fish  
17 and wildlife area here in California, and I'm certainly  
18 privileged to be on the Commission, and look forward to working  
19 with Members of this Legislature as we move forward to solve  
20 many of these problems.

21           Thank you for opportunity.

22           CHAIRMAN LOCKYER: Thank you.

23           Maybe I could ask if there's anyone who wishes to  
24 comment either for or oppose the nomination, please.

25           MR. EDMONDSON: Good afternoon, Mr. Chairman. I'm  
26 Jim Edmondson, Executive Director for California Trout, a  
27 statewide conservation group that's worked in California.

28           I'm here today to support Mr. Chrisman. First on



1 his deeds, and second on what I hope he achieves.

2 I'm passing around photographs of what has been  
3 described as the most beautiful fish that swims. That happens  
4 to be our state fish, the golden trout.

5 When Mr. Chrisman first came on to the  
6 Commission, and with his background in Food and Ag., he saw that  
7 protecting the habitat and beginning to improve management in  
8 the upper south fork of the Kern River was critical to prevent  
9 our state fish from being listed as an endangered species. And  
10 that's exactly what the U.S. Fish and Wildlife Service was  
11 speaking about.

12 Because of his leadership early in his tour of  
13 duty on the Commission, he joined and convinced his other  
14 Commissioners to designate the headwaters of our state fish  
15 under a special policy built upon legislative mandate, the Wild  
16 Trout Program, considered the most successful fishery program in  
17 this state over the past 25 years.

18 The catchword here is that there is a Memorandum  
19 of Understanding between the land administrator, the Forest  
20 Service, and the California Department of Fish and Game that  
21 places higher restrictions on protecting the habitat so we can  
22 avoid a dwindling or a disappearance of our state fish.

23 The photograph is of the fish. I'm happy to  
24 report in that photograph you can see already the changes that  
25 are going on with the habitat itself, made voluntarily and  
26 cooperatively by the Forest Service. Mr. Chrisman's  
27 responsible for that in his leadership.

28 But I don't think that's the reason why I should





1 be here today because that's a special interest.

2 I believe that Mr. Chrisman has the qualities  
3 that the Commission and the Legislature desperately need at this  
4 time.

5 In 1990, the executive branch and the Legislature  
6 was handed a copy of the Little Hoover Commission's diagnosis of  
7 what ailed Fish and Game. With all due respect, we've seen no  
8 action on any of the eight recommendations. One of those eight  
9 recommendations was to do exactly as Mike Chrisman has just  
10 shared with you.

11 He has a legislative background. He has an  
12 administrative background. He has demonstrated a real interest  
13 to reach out to stakeholders.

14 On that basis, if we are going to repair -- in my  
15 view and Cal Trout's view -- Fish and Game, it's got to start  
16 with governance, and we have to have a house cleaning at the  
17 Commission, and their authority and skills to oversee the  
18 Department of Fish and Game.

19 Thank you very much.

20 CHAIRMAN LOCKYER: Is there anyone else that  
21 would wish to comment?

22 MR. GAINES: Mr. Chairman, Members of the  
23 Committee, my name is Bill Gaines. I'm the Director of  
24 Government Affairs for the California Waterfowl Association.

25 And the California Waterfowl Association would  
26 also like to urge the Senate Rules Committee prompt confirmation  
27 of Michael Chrisman.

28 Over the course of the last several years, as you



1 heard Mr. Chrisman state earlier today, he has served in several  
2 high level capacities, each of which provide him with a solid  
3 background to help him do an outstanding job as a member of the  
4 Fish and Game Commission. Those include being a staffer to a  
5 Member of the State Legislature, a position with the California  
6 Department of Food and Agriculture, as well as a position with  
7 the California Resources Agency.

8           Those three types of experiences, combined with  
9 the fact that he's a fourth level -- or fourth generation family  
10 farmer in San Joaquin Valley, we believe, provide him with the  
11 unique qualities that are necessary for a member of the  
12 California State Fish and Game Commission to provide the deep  
13 insight necessary to make positive and appropriate decisions on  
14 many of the tough issues that the Commission faces on an annual  
15 basis.

16           During the course of the last several months  
17 during his tenure on the Fish and Game Commission, we have found  
18 him to be very accessible. We have found him to go out of his  
19 way to reach out to stakeholders, as the previous gentleman just  
20 stated, not only stakeholders that are on the environmental  
21 side, but also on the agriculture, urban, and every side  
22 necessary to provide the information necessary to make  
23 intelligent decisions.

24           Most recently, as you heard Mr. Chrisman state,  
25 he has taken the lead in helping the Commission to find a  
26 strategic planning effort to lead them into the 21st Century,  
27 something which we agree the Commission could very much use, and  
28 something which we are proud to see the Commission willing to





1 take on because it won't be an easy effort. Mr. Chrisman, as I  
2 stated, has taken a lead in doing that, and we believe he should  
3 be applauded for doing so.

4 We would like to offer him our strong support in  
5 today's confirmation.

6 Thank you very much.

7 CHAIRMAN LOCKYER: Anyone further?

8 MR. BUCARIA: Senator Lockyer and Members of the  
9 Committee, my name is Charles Bucaria. I'm Conservation Vice  
10 President for the Federation of Fly Fishers in Northern  
11 California.

12 It's my pleasure on the behalf of our  
13 organization to support Mr. Chrisman's confirmation proposal and  
14 to urge that you take rapid action in that regard.

15 We are one of those special interests. We are  
16 your fishermen. There are 30 clubs in Northern California that  
17 contain some 7,000 members.

18 And we're very concerned about the Fish and Game  
19 Commission at this time, particularly the inability of the  
20 Commission to provide the type of policy direction, the  
21 effective policy direction that is needed by the Department in a  
22 manner that will render our resources, our wildlife and fish  
23 resources, in better condition than they are right now.

24 Shortly, we expect to hear steelhead in the  
25 Central Valley streams are designated by National Marine Fishery  
26 Service as endangered. We're not sure what's going to be  
27 happening on the north coast end of it, but we see the lack of  
28 coordination between federal and state governments, the lack of



1 coordination between the various groups within the Resources  
2 Agency focused toward fishery and wildlife enhancement, not  
3 merely preservation, but enhancement because of their diminished  
4 conditions. We see those as evidences of the failure of our  
5 present system to work.

6 We think that Mr. Chrisman is eminently suited to  
7 provide the type of leadership that the Department and the  
8 Commission need. We think that this strategic planning effort  
9 that he has implemented has some very logical results which we  
10 feel that he's uniquely suited to see happen.

11 This is a window of opportunity for us, and my  
12 view is, he is the right guy to do the job.

13 For those reasons, we ask that you take action  
14 today to move his continuation on the Commission forward.

15 Thank you.

16 CHAIRMAN LOCKYER: I should probably indicate, I  
17 don't think we will take action today because we have an  
18 informal rule which is, if Members request a delay, we do that  
19 as a courtesy. I don't think it's going to be lengthy delay,  
20 but we've had colleagues who have asked for time to think about  
21 it a little bit more. But we have to do it within the next  
22 month because that's when the clock stops.

23 Questions from Members, Senators.

24 As I understand, looking through the letters of  
25 not opposition, because I don't think there are any that I  
26 recall as formally opposed, but the concerned file, I guess is  
27 the label it gets, there seems to be -- excuse me, there were  
28 letters of opposition from the Council for Planning and



1 Conservation, Humane Education Network, and then a concerned one  
2 from Funds for Animals.

3 They seem to principally, mostly all of these, to  
4 have some anxieties about your perspectives with respect to  
5 animal protection, livestock, maybe things of that sort.

6 Do you want to just tell us what debates you've  
7 been associated with in this domain, and what we could expect?

8 MR. CHRISMAN: I'd be happy to, Senator.

9 The way I read the letters, essentially, is  
10 because of my background in agriculture, that somehow I would  
11 not be sensitive to the needs of animals, the safety of animals,  
12 and the welfare of animals.

13 That's just not the case. Again, I've spent my  
14 life working with animals, and sensitive to animals and their  
15 needs and their very welfare. That, of course, transcends into  
16 the fish and wildlife arena as with all animals.

17 So, I don't differentiate in terms of my care and  
18 concern for them.

19 CHAIRMAN LOCKYER: The planning process  
20 concludes when?

21 MR. CHRISMAN: We've got -- we've instituted it.  
22 We've held a couple of public hearings. Actually, one workshop  
23 and one hearing here in Sacramento a couple of weeks ago. We  
24 are in the process now of putting the information together  
25 into -- what we heard that day on both the workshop in Long  
26 Beach and on the 16th here in Sacramento, the information that  
27 we got.

28 Then what we're going to be doing is, we're going





1 to be identifying probably about -- I'm not quite sure yet --  
2 six or seven areas around the state where we're going in. We're  
3 going to invite some focus groups in, stakeholder groups,  
4 probably no more than probably 15 people in each one of these  
5 focus groups. And what we would do is, out of the two previous  
6 public hearings that we've held, we'll ask a number of questions  
7 from an operational standpoint, Commission operations, roles and  
8 responsibilities, marine resources, those areas. We'll start to  
9 begin to focus on how we really get about fixing some of these  
10 problems.

11 Then we will put together out of that a draft  
12 strategic plan that then, of course, will go out for comment,  
13 public comment. And then we will hold, of course, hold a number  
14 of public dialogues about that. And hopefully, by the end of  
15 the summer, late summer or early fall, we'll have a completed  
16 document that will have action items. We'll have specific areas  
17 of measurable areas, so then as a Commission, we can revisit  
18 this on either a semi-annual or annual basis, depending on what  
19 we decide along the way, so we can measure on how we're doing in  
20 terms of our agreed upon goals and objectives.

21 We, quite frankly, think that this is the best  
22 way, one of the best ways to help us better manage this valuable  
23 fish and wildlife resource, and at the same time, get the kind  
24 of stakeholder input and public input so necessary in so many  
25 areas.

26 CHAIRMAN LOCKYER: If you had to kind of quickly  
27 state what the problems are, we've always found it's a lot  
28 easier to state the problem rather than the solution, but what



1 would be your list of the three or four principle challenges or  
2 problems?

3 MR. CHRISMAN: Well, with respect to the  
4 strategic plan, clearly we do not have a clearly defined mission  
5 statement. We need to get about doing that. I mean, a mission  
6 statement talks about what the Commission, what our mission  
7 really should be in a sense. And we need to spend some time  
8 with that because all of what we do after that will kind of  
9 center around that.

10 We need to spend some time thinking about a  
11 vision for the Commission. What is it that we want this  
12 Commission to be? How do we want to be viewed in the public  
13 arena? Together with our stakeholders, what fish and wildlife  
14 resources that we're called upon to manage? How do we want to  
15 set the priorities in managing those resources?

16 The other thing I think is really important is a  
17 clearly defined group of roles and responsibilities for  
18 Commissioners so we have a clear sense of what we're called upon  
19 to do.

20 One of the things that we did as we started this  
21 strategic planning effort is to try to get our arms around the  
22 statutes, try to get a sense of what our responsibilities really  
23 are, going back and have done a review of all of the statutes  
24 that relate to the responsibilities that this Legislature has  
25 given us over the years. Quite frankly, it's very, very  
26 significant.

27 It's going to cause us, we think, to probably do  
28 some prioritization. Not that one is more important than the





1 other, but clearly, if we're going to get about fixing some of  
2 these very difficult problems, we're going to need a lot of  
3 help. A lot of help from the Department, a lot of help from the  
4 Legislature, a lot of help from our stakeholder groups and the  
5 people of California.

6 So, those are the areas, quite frankly, in a  
7 short, round about way, that I think that we're going to  
8 hopefully get our arms around here in the next few months.

9 CHAIRMAN LOCKYER: Other questions?

10 I have a feeling we're ready to go, ready to  
11 vote, but out of courtesy to colleagues that have asked, you'll  
12 probably be back on the calendar next week. Maybe it needs two,  
13 but I don't know that you need to appear again. We will let you  
14 know whether that's necessary.

15 Thank you, sir.

16 MR. CHRISMAN: Thank you, Senator.

17 [Thereupon. This portion of the  
18 Senate Rules Committee hearing was  
19 terminated at approximately 2:56 P.M.]

20 --ooOoo--  
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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

3rd day of February, 1998.

  
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APPEARANCES

MEMBERS PRESENT

SENATOR JOHN BURTON, Chair

SENATOR JOHN LEWIS, Vice Chair

SENATOR RUBEN AYALA

SENATOR JAMES BRULTE

SENATOR TERESA HUGHES

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NANCY MICHEL, Consultant on Governor's Appointments

WADE TEASDALE, Consultant to SENATOR LEWIS

FELICE TANENBAUM, Consultant to SENATOR HUGHES

TOM ROSS, Consultant to SENATOR BRULTE

ALSO PRESENT

THOMAS J. GIAQUINTO, Member  
Board of Prison Terms

CLARENCE A. TERHUNE, Director  
California Department of Corrections

SENATOR RICHARD POLANCO

FRANK R. SEARCY, President  
Chicano Correctional Workers Association

ROY MABRY, State President  
California Association of Black Correctional Workers

BILL BAKER, Mayor  
City of Taft

LANCE CORCORAN, Vice President  
California Correctional Peace Officers Association

RICO BARNES, Correctional Lieutenant  
California Department of Corrections

SHELLEY BRYANT, Correctional Lieutenant  
California Department of Corrections

1 ROBERTO P. VELLANOWETH, Member  
2 Youthful Offender Parole Board

3 MARIO OBLEDO, President  
4 California Coalition of Hispanic Organizations

5 DOUG WILHOIT, Vice Chairman  
6 Youthful Offender Parole Board

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## P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Item Three, Governor's appointees appearing today, Thomas J. Giaquinto, member of the Board of Prison Terms.

MR. GIAQUINTO: Good afternoon.

CHAIRMAN BURTON: Good afternoon.

MR. GIAQUINTO: My name is Tom Giaquinto, Commissioner with the Board of Prison Terms. That's it, sir.

CHAIRMAN BURTON: That's your name?

MR. GIAQUINTO: Yes, sir.

CHAIRMAN BURTON: That's good enough reason to confirm you?

MR. GIAQUINTO: Not yet.

CHAIRMAN BURTON: I'm new to this. Say something. Give me a chance to catch up.

[Laughter.]

MR. GIAQUINTO: Well, what I'd like to say is, I've been a Commissioner for approximately four years. Actually, 1993 is when I came on the Board. So, I'm into my fifth year on the Board of Prison Terms.

My responsibilities, of course, are conducting the lifer hearings and occasional rescission hearings.

And I really feel very strongly about the work that I do. Previously, I was a police officer with the City of San Diego for approximately 25 years.

I never really understood what happened on the other end of the spectrum, because I'd spent a lot of time



1 trying to catch them and put them in, and they were getting out.  
2 And I never understood that and said, what's wrong with those  
3 people up there? How come every time I take a lot of time to  
4 put them in prison, now they're getting out of prison?

5 Now I understand. I have another perspective on  
6 why people need to be let out of prison, why people need to be  
7 kept in prison, and who needs to be kept there.

8 Dealing primarily with the lifers, of course,  
9 it's not as complex as it might be if I were dealing in other  
10 areas, say, with determinate prisoners. But dealing with the  
11 indeterminate prisoners and the mandatory sentencing on second  
12 or first degree murderers, and attempt murderers, and train  
13 wreckers and such, you know, it's been a real learning  
14 experience for me.

15 Really, I came in this, I never heard of Title  
16 Fifteen as a police officer, never. I didn't know what Title  
17 Fifteen was, but I learned in a hurry.

18 So, I'm back here today, and I'm hoping that  
19 you'll look upon me favorably and keep me here for another three  
20 years, I guess it would be, for the completion of a four-year  
21 term.

22 I welcome any questions by the Senators, and  
23 hopefully I'll be able to answer them to your satisfaction.

24 SENATOR HUGHES: Mr. President, may I?

25 CHAIRMAN BURTON: Yes, Senator Hughes.

26 SENATOR HUGHES: Given the problem of severe  
27 overcrowding occurring in the prison system, what do you think  
28 BPT should do to alleviate this shortage of the bed space? That



1 really concerns me, as I'm sure it concerns you.

2 What ideas do you have?

3 MR. GIAQUINTO: Well, as I said, Senator, and  
4 thank you for asking that question, as I said, I deal primarily  
5 almost a hundred percent in the area of lifer hearings. And  
6 those are indeterminate prisoners, and not many of them are  
7 granted suitability.

8 Of course, the Board of Prison Terms, which comes  
9 under the day-to-day administration of our Chairman, is also  
10 responsible for the area of revoking paroles where we have  
11 violators, and things like that.

12 There's probably some things that we can do. I  
13 know we're looking into many different areas right now. Some of  
14 those things that we're presently considering are such things as  
15 electronic monitoring, which may assist us in not putting so  
16 many people back in prison when they've violated their  
17 conditions of parole.

18 The premiere or primary consideration, of course,  
19 in each step is the safety of our citizens, and to weigh that  
20 against the jail overcrowding, sometimes, is an extremely  
21 difficult task, as I'm sure you're well aware.

22 We have, in implementing our system of justice,  
23 many different aspects that, in effect, reduce the prison  
24 population. It starts off when the prosecutor has an  
25 opportunity to reduce an offense to a lesser offense. And then  
26 it goes to the court, and the court can reduce the length of  
27 term.

28 And then, in our legislation, we have such things

1 as good time credit, so we've also implemented that, saying,  
2 well, yes, this is a three-year sentence, but we're going to let  
3 you get out in 18 months if you're a good person in prison.

4 We've got all these things that happen. Now, we  
5 put them in prison, we let them out, and what happens? They go  
6 out, and they do the same thing. And we have to look at what  
7 the crime was that they committed when they violated parole.

8 SENATOR HUGHES: Talking about that, could or  
9 should BPT direct additional numbers of parole violators to drug  
10 treatment or alternative punishment programs instead of  
11 returning them to prison?

12 MR. GIAQUINTO: I believe that we surely have to  
13 consider that as an alternative, because we know that in many  
14 cases, that is the answer for some violators, and that is  
15 treatment.

16 We have to be extremely cautious when we talk  
17 about returning -- not returning someone who is a drug abuser,  
18 because we find that in such a large percentage of the crimes  
19 that have occurred, substance abuse was at the root cause of the  
20 violation.

21 So, we've put them in prison for an assault,  
22 let's say, with a deadly weapon. And they were drunk. They  
23 were in a bar fight, and they hit somebody with a pool cue. So  
24 now we kick them out on parole and what happens? They're picked  
25 up by the police for drunkenness. Now, that seems kind of like  
26 a minor offense. It's probably at the lowest end of the  
27 misdemeanor offenses, but we have to consider that individual's  
28 history of chronic alcohol abuse and where it led him in the

1 past.

2 Surely, we cannot ignore the fact that this  
3 individual needs treatment and should be directed towards a  
4 substance abuse program of some type.

5 In the case of a drug dealer, I don't know if  
6 we'd want to put him -- if he was only caught with a small  
7 amount of marijuana on electronic monitoring, because we find  
8 that the most common environment for drug dealers are homes.  
9 So, if you put them on electronic monitoring, there's a good  
10 chance he's going to be dealing out of the back window of his  
11 house, so we might not want to do that.

12 CHAIRMAN BURTON: Or not.

13 MR. GIAQUINTO: Or not, but we surely want to  
14 consider that that's a possibility in that person's case.

15 But if historically they've only had one prior  
16 violation, we may want to consider treatment and electronic  
17 monitoring, and increased parole awareness by the agent that is  
18 responsible for that individual.

19 SENATOR HUGHES: CDC data indicates that parole  
20 agents in some regions of our state have a greater propensity to  
21 return violators to prison than agents in other parole regions.

22 What factors do you believe account for these  
23 variations in revocation rates, and what should we or should we  
24 not be doing about that?

25 MR. GIAQUINTO: You know, Senator, I don't know  
26 if I can really answer that to the degree that's going to  
27 satisfy anyone. And that's because, I'll tell you why.

28 It's no different than saying, they're all



1 different individuals, no different than the police officers we  
2 have on the street who may give one person a verbal warning for  
3 a citation, and another officer will write him a ticket every  
4 time they stop a car.

5 And the same with the parole officers. We might  
6 find that as individuals, some will have a zero tolerance --  
7 they employ zero tolerance. The first time the parolee does not  
8 report to the office, they want to violate that parolee. Others  
9 won't do that. They will and they'll talk to them, and say,  
10 hey, you can't do this, this is your first offense or second  
11 offense.

12 I think it's incumbent upon us as the reviewers  
13 of these violations to assure that that is not the case, and to  
14 even interact with CDC and Parole to assure that we at least  
15 pursue trying to have some stability in terms of equal  
16 administration of how they're violating the parolees.

17 SENATOR HUGHES: To what extent are community  
18 correctional centers and work furlough programs being utilized  
19 for parole violators, and should these programs be expanded,  
20 modified, or discontinued?

21 MR. GIAQUINTO: I don't know the answer to the  
22 first part of your question, Senator, and I apologize, because I  
23 don't know to what degree.

24 I know that in the revocation process, if we find  
25 that that person has been in that program has not been taking  
26 advantage of it, or that we should increase their awareness of  
27 programs, we try to push them in that direction.

28 In terms of what we should do in terms of

1 encouraging the expansion of those programs, absolutely, because  
2 as I said, not only the drugs, but how about the dysfunctional  
3 family issues that we find are so common amongst the vast  
4 majority of our violators? Why not put them or at least try to  
5 encourage them in the direction of some program that will assist  
6 them in maybe reunifying the family setting that they're in?

7           Approximately 70 to 80 percent of all of the  
8 lifers that we see coming into prison have one common basis, one  
9 common occurrence that occurred well before the drug use and the  
10 gang use and all. They came from families where one or both  
11 parents was missing before the age of five. That's the single  
12 most common thing we see with these prisoners.

13           And then they go into the juvenile delinquency,  
14 and the drug use, or the gangs because they find people on the  
15 street that then become their families.

16           So, when we are talking about things that you  
17 asked about, Senator Hughes, we need to push them in all of  
18 those directions. Anything that will help them to reestablish  
19 who they are, build their self-esteem, teach them about family  
20 values, drug abuse, all of those things, and we should take an  
21 active role in that at all times.

22           SENATOR HUGHES: Thank you.

23           CHAIRMAN BURTON: Senator Lewis.

24           SENATOR LEWIS: According to our statistics,  
25 about 75 percent of those on parole actually fail. I want to  
26 ask you, what in your estimation are the couple of things could  
27 or should be done to make that a more respectable number?

28           MR. GIAQUINTO: Again, I guess, Senator, it's



1 probably, you know, we don't know why so many criminals fail  
2 parole. They tend to go back and repeat the same types of  
3 criminality.

4 And I really feel, after having reviewed so many  
5 -- and again, I'm talking about lifers now because that's my  
6 area of expertise, the indeterminate prisoners -- so many come  
7 to prison with IQs under 100, probably in the 60 to 90 range.

8 I think that education in prison is imperative.  
9 When they first get there, let's get them into the GED programs,  
10 educate them. We find that over the period of time, the more  
11 educated they are, the less likely they are to re-offend.  
12 Encourage them to get into the programs that are available in  
13 the prison that are cost effective for us. GED programs seem to  
14 work very well.

15 We have cut a lot of educational programs out  
16 because of the fact that they were not cost effective.

17 But I understand over at San Quentin, we have a  
18 lot of professors that are volunteering their time to teach  
19 college courses. If we can implement or encourage that kind of  
20 participation by our citizens in other areas of the state, in  
21 other institutions, and we can increase the educational level of  
22 a lot of the prisoners that we see, I think it may, in fact,  
23 impact the recidivism rate, in addition to other programs, such  
24 as drug abuse, and anything else and we can get them involved  
25 in.

26 CHAIRMAN BURTON: Senator Ayala.

27 SENATOR AYALA: Mr. Giaquinto, you're a member of  
28 Board of Prison Terms. You are responsible for setting the

1 conditions and length of parole for lifers. I guess that's who  
2 you deal with.

3 Can you give us a brief idea how you come to that  
4 conclusion, how long will they serve, and the conditions set  
5 before them? What do you look for in these inmates that are  
6 ready to be released?

7 MR. GIAQUINTO: In the indeterminate prisoners  
8 that we see, of course, you know, these are lifers. And there's  
9 not that many crimes, if you weigh that against the Penal Code,  
10 that a person gets sentenced to life for. We're talking  
11 primarily about murders, attempted murders, kidnappings, maybe  
12 train wrecking.

13 First of all, you have to weigh the offense and  
14 the participation of the individual. That's what I look at  
15 first, the gravity of the offense. Yes, in fact, a person may  
16 have been killed. A person lost their life in the offense. But  
17 who do we have before us? I'll give you just an example.

18 Let's say we have a young 16-year-old girl that  
19 falls in love with some 21-year-old guy who says, drive me over  
20 to the 7-11. I'm going to stick this place up. He goes inside  
21 and he kills the clerk. Now they both go to prison, because she  
22 was the driver of the getaway car, felony murder rule.

23 So, she's been in prison eight or ten years.  
24 She's been a model prisoner. Do we really want to keep her in  
25 the rest of her life? I think not. Otherwise, the citizens and  
26 the Legislators of this state would not have provided for  
27 parole.

28 So, with everything being equal, we may want to

1 look at letting her out. We'd look at her participation in the  
2 crime, the gravity of the offense, and how she's been  
3 programming in prison, and her prior history of criminality, if  
4 there was any.

5 On the other hand, the shooter, we may want to  
6 keep him in a little longer because of the serious nature of the  
7 offense that the shooter committed. He killed another human  
8 being just because he went in to rob some place for five bucks.

9 And if he's got a long prior record, and he  
10 hasn't been doing well in the prison, and he's spitting at  
11 officers because he doesn't want to come out of his cell, my  
12 vote is, keep him there a while longer because he's not  
13 following the rules inside the prison, he's not going to follow  
14 the rules outside of prison. And the serious nature of the  
15 offense, in and of itself, may justify a longer term of  
16 incarceration.

17 SENATOR AYALA: How close do you work with the  
18 supervising parole agents out in the field?

19 MR. GIAQUINTO: I don't work closely with them  
20 myself, Senator, because of the nature of my job. I travel 44  
21 weeks of the year out of town. I'm in a hotel room, and then  
22 the other six or eight weeks, I happen to work in a prison  
23 that's near my home. So, I'm on the road most of the time doing  
24 the lifer hearings.

25 SENATOR AYALA: You do not have contact with the  
26 supervising agents out in the field?

27 MR. GIAQUINTO: No, I don't have any contact with  
28 them.



1 SENATOR AYALA: Who does?

2 MR. GIAQUINTO: Our Chairman does, and of course,  
3 our chief deputy commissioners, and the personnel that we have  
4 in Sacramento interact often with those organizations because,  
5 of course, we need to coordinate our efforts sometimes. They're  
6 doing that a lot right now with some of the other --

7 SENATOR AYALA: Who determines whether an  
8 electronic monitoring device will be used on a parolee?

9 MR. GIAQUINTO: That would be the Chairman via  
10 the chief deputy commissioner, and the deputy commissioners, and  
11 down that other side, because I'm still in the lifer side where  
12 I'm just doing the murderers.

13 SENATOR AYALA: Do you have a lot of those people  
14 out in the field that have been paroled that are on these  
15 electronic devices for monitoring? Do you use that quite  
16 extensively?

17 MR. GIAQUINTO: I don't know. Obviously, I don't  
18 know if we have a lot of them out there or not.

19 SENATOR AYALA: Who would know?

20 MR. GIAQUINTO: I think that our Chairman would  
21 know.

22 SENATOR AYALA: We will get to him later then.  
23 He's sitting over there.

24 MR. GIAQUINTO: Is that Mr. Terhune? He knows  
25 everything.

26 SENATOR AYALA: I just wondered, because I have a  
27 problem with the way -- well, I'll save it for him.

28 That's all I have, Mr. Chairman.

1 CHAIRMAN BURTON: A 75 percent failure. What  
2 kind of failure? What do they do? They commit a crime, and  
3 they pee dirty in a bottle? What do they do?

4 I'm sorry. Following up, I think when Senator  
5 Lewis said, how many violate, what percentage? You said,  
6 roughly 75.

7 How many of them are, like, doing bad stuff and  
8 how many are doing stupid stuff?

9 MR. GIAQUINTO: I don't know. I can't break that  
10 down for you because I don't know.

11 CHAIRMAN BURTON: Wouldn't that be important?  
12 That's important for us to know because we've got to come up  
13 with the money to pay for the prisons that these people are in.  
14 And, you know, you have somebody that does something bad, that's  
15 a crime in and of itself, I think that's one thing.

16 You have somebody that misses an appointment with  
17 a parole officer, again for stupidity, maybe he pees dirty in a  
18 bottle, depending on what it is for, stupidity, I mean, it would  
19 seem to me that the taxpayers would be better served by doing  
20 something other than, you know, first shot out of the box,  
21 revoking him. Whether it's the one that failed the test, that  
22 you make sure that they're going to some 12-step programs, and  
23 monitoring that. If they missed a meeting with the parole  
24 officer, you kind of let them know that every dog gets a bite,  
25 but, you know, this can be a very serious thing.

26 But information that I had when I chaired Public  
27 Safety that was really brought to me by Senator Lockyer, it  
28 seemed there were an awful lot of people going back to prison at



1 a high cost that were not necessarily a threat to anybody,  
2 including themselves. I don't necessarily know it's a threat to  
3 society to blow an appointment somewhere.

4 I would like if somebody could get us that  
5 information. I don't blame you for not having it, but I think  
6 it's important for us to know what are people going in for and  
7 what are they not.

8 And then, I think you probably always can have  
9 uneven application of the law, you know, whether it's a traffic  
10 cop, the two-wheeler, may give people a pass if they're going 40  
11 in a 35, and somebody may give them a ticket if they're going 36  
12 in a 35.

13 MR. GIAQUINTO: Well, you know what, Senator  
14 Burton? You're absolutely right. I agree with almost  
15 everything you said, and I kind of alluded to that with, I  
16 guess, Senator Hughes and Senator Lewis, when I was talking  
17 about the differences between the parole officers and all that.

18 I do know that approximately, out of 150,000  
19 prisoners that we have in prison, about 57,000 of them are  
20 returnees on parole revocations.

21 Now for which individual violations, I don't  
22 know. But I do know, as Senator Hughes said, and you are right,  
23 some of these we may want to take a look at again.

24 CHAIRMAN BURTON: It's interesting, and I'd like  
25 to know which ones, like, committed crimes, and which ones did.  
26 Again, to me there's a difference between bad and stupid, and  
27 sometimes stupid can get into bad. I think that's something  
28 where we might have the information made available to us.

1           A couple other comments, if somebody goes to  
2 prison with under a hundred IQ, I don't know how much a  
3 volunteer college professor is going to do for them. I mean,  
4 when you're under 100 IQ, you've got some learning disability  
5 problems.

6           I think it's good that almost as much counseling  
7 and as much education as we can get, but we're not going to make  
8 college graduates necessarily out of the 100 IQ.

9           Now, what is the situation, and then I've got  
10 just this one and then Senator Lewis, do you deal with the  
11 battered woman syndrome prisoners that are down there? There  
12 are several that are doing some time to life for having killed  
13 an abusive spouse.

14           And I visited Frontera years ago, and there were  
15 like 13 women in there doing time to life. And only one of them  
16 had ever even had a beef before she got arrested, once drunk,  
17 once for possession of Marijuana.

18           There was some old Italian woman that probably  
19 used to clean the rectory at her local parish, who, after her  
20 husband -- you know, I mean, classic thing. They're still in  
21 jail.

22           I mean, these people wouldn't be a threat, you  
23 know, to anybody in the world. And at what point, you know,  
24 we've tried to get the Governor, and he's pardoned, I think,  
25 one.

26           At some point, we're going to take a look at  
27 these people and say they aren't a threat. I mean, again,  
28 they're not quite the 16-year-old with the boyfriend, but had

1 they been arrested, you know, five years ago instead of ten  
2 years ago, they would have had a defense that they probably  
3 either would have gotten a lesser penalty or maybe even skated.

4 How are you dealing with these people?

5 MR. GIAQUINTO: Well, first --

6 CHAIRMAN BURTON: And you means all ya'll, not  
7 just ya'll.

8 MR. GIAQUINTO: All ya'll.

9 Well, you know, I'm going to try to speak for  
10 myself. I personally have granted parole to at least two bona  
11 fide battered women.

12 And there are battered individuals that we see  
13 men, and women, primarily women. There are some men that we  
14 have that were battered not necessarily by their spouses, but  
15 they were in a similar Environment in a work place where they  
16 couldn't leave the job because was meant everything, and  
17 co-workers were doing things similar to what spouses do.

18 First of all, we have to look at the incident  
19 itself. Well, first of all, we've got to determine if they're  
20 bona fide battered women.

21 We have actually had women testify in our  
22 hearings saying, well, I wasn't really a battered woman, but I  
23 put my name on the list because they were sending --

24 CHAIRMAN BURTON: We aren't talking about them.

25 MR. GIAQUINTO: Right. So, we're talking about  
26 the bona fide battered women.

27 This is something that you have to really be  
28 sensitive to, and be compassionate about, because they, in fact,



1 were victims.

2 But what is society really saying? Are we saying  
3 that, in fact, we are going to condone the murder or the taking  
4 of a human life --

5 CHAIRMAN BURTON: No, no, that's not my question.

6 My question is, they're in jail. They're doing  
7 time. Some of them have done some fairly serious time.

8 And should they be kept in at taxpayers' expense  
9 when they're absolutely of no danger to society?

10 Some of them have been in there 10, 12, 13, 14,  
11 15 years. That's kind of serious time to me.

12 And nobody's saying give them a pass, although  
13 some of them, if you can believe the stories, and let's assume  
14 we can believe half of them, they would have walked. They  
15 wouldn't even be in jail because battered women's syndrome was  
16 something that was not taken into consideration.

17 So, I'm just saying, there are people there that  
18 we would all agree. Somebody said I just came in because I  
19 thought it's a good idea, that's not worth your time, my time,  
20 or the Committee's time.

21 I'm talking about the women that are there that  
22 clearly, the history shows never in their life did they do  
23 anything.

24 This one woman that sticks in my mind, every time  
25 we went to talk to her priest, the priest said, pray for  
26 yourself and your husband. She'd say a few prayers, go home and  
27 get another whack, you know, and sometimes with a sledge hammer.

28 This is what I'm talking about. I guess I'm

1 hearing you say, not to the extent I'd like it, that, you know,  
2 you look at these things individually and treat it seriously.

3 But to say that by letting somebody out who maybe  
4 was driven to this act after they did twelve years in prison is  
5 not saying, hell, that's all right, go kill somebody else.

6 MR. GIAQUINTO: No, Senator, I think what I was  
7 doing was laying out for you my thought process in terms of how  
8 I make that decision.

9 At the preliminary report of what I was saying is  
10 what I consider, the seriousness of the crime. And as you've  
11 said, we can't give them a pass because they've taken another  
12 human's life.

13 CHAIRMAN BURTON: The seriousness of the crime,  
14 excuse me, I'm taking too much time.

15 The seriousness of the crime is, they killed  
16 somebody. That's a given.

17 MR. GIAQUINTO: But I'm trying to give you the  
18 thought process. I thought that's what you asked, how I make  
19 that decision.

20 CHAIRMAN BURTON: I asked what you were doing,  
21 but that's okay.

22 Senator Lewis, go ahead. I don't want to take up  
23 everybody's time.

24 SENATOR LEWIS: I'll pass on my comment.

25 CHAIRMAN BURTON: We can get into this later,  
26 maybe give this to the Budget Committee or Public Safety, but  
27 there's 74 percent revoked; 58 are technical violations.

28 Could you tell us what a technical violation is?



1 MR. GIAQUINTO: I have no idea, Senator. I don't  
2 do that.

3 CHAIRMAN BURTON: That's fine; that's good.

4 One other thing, on the sexual violent predator  
5 system, how many people do you know have been referred to that  
6 so-called civil commitment process? Do you have any idea?

7 MR. GIAQUINTO: Somebody knows other than me. I  
8 know it's several hundred.

9 CHAIRMAN BURTON: Seven hundred have been  
10 referred?

11 MR. GIAQUINTO: No -- yeah, that's right.  
12 Approximately 700 have been referred.

13 CHAIRMAN BURTON: Seven hundred whose time came  
14 to get out were then referred to the --

15 MR. GIAQUINTO: That's correct.

16 CHAIRMAN BURTON: When somebody comes in the  
17 prison that's a sexual predator, which is a term I'm not crazy  
18 about, or even I guess just convicted of a kind of bad sexual  
19 crime, is there treatment that's given to these people in the  
20 prison? Or do we just hope that they're in there, and somehow  
21 lightning will strike, and whatever drove them to do these kind  
22 of acts will stop them?

23 Is this a fair question to ask you or ask the  
24 Department of Corrections?

25 You get somebody who's got a record of being  
26 really bad. Do they try to like get to the bottom of it, or do  
27 they just figure, well, we'll be able to hold him another two  
28 years in civil commitment, so why bother?

1 MR. GIAQUINTO: I can't really answer that to the  
2 degree that you'd want me to answer. I only have my own  
3 personal knowledge, and that is, we had a lot of programs that  
4 have now been cut back for budgetary purposes.

5 And for the more violent ones, yes, there are  
6 still places, like Atascadero, or, you know, there are some  
7 treatment programs within the institutions.

8 CHAIRMAN BURTON: That would be more of a  
9 question for them. I think that's it.

10 Any other questions by other Members?

11 Is there support? We have record of the people  
12 who are supporting you. It's very impressive, indeed.

13 Any opposition?

14 SENATOR LEWIS: Move confirmation.

15 CHAIRMAN BURTON: Moved by Senator Lewis. Call  
16 the roll, please.

17 SECRETARY WEBB: Senator Ayala.

18 SENATOR AYALA: Can I ask a question? Are we  
19 going to hear from those that support the gentleman?

20 CHAIRMAN BURTON: Sure. I asked for support.  
21 They're on record.

22 SENATOR AYALA: Ayala Aye.

23 SECRETARY WEBB: Ayala Aye. Senator Brulte.

24 SENATOR BRULTE: Aye.

25 SECRETARY WEBB: Brulte Aye. Senator Hughes.

26 SENATOR HUGHES: Aye.

27 SECRETARY WEBB: Hughes Aye. Senator Lewis.

28 SENATOR LEWIS: Aye.

1 SECRETARY WEBB: Lewis Aye. Senator Burton.

2 CHAIRMAN BURTON: Aye.

3 SECRETARY WEBB: Burton Aye. Five to zero.

4 MR. GIAQUINTO: Thank you.

5 CHAIRMAN BURTON: We'll chat again.

6 Next would be Clarence Terhune.

7 Related to Payson Terhune?.

8 MR. TERHUNE: He was my grandfather's cousin,  
9 Albert Payson.

10 CHAIRMAN BURTON: Exactly. Anybody know who he  
11 is?

12 MR. TERHUNE: Didn't read your dog stories, did  
13 you?

14 CHAIRMAN BURTON: He wrote the Lassie books, and  
15 Buff, a Collie.

16 SENATOR BRULTE: Then I move the nomination.

17 [Laughter.]

18 CHAIRMAN BURTON: This is a dog, isn't it?

19 Senator Polanco is here.

20 SENATOR POLANCO: Yes, Mr. Chairman and Members,  
21 I'm here today to introduce to you a man who has served over 30  
22 years in this area of corrections, starting at Youth Authority  
23 and working his way up.

24 As you know, Cal was brought out of retirement by  
25 the Governor to assume the position of Director of CDC. What  
26 has impressed me most, Members, you should know that from the  
27 time that he had taken on the role, he has visited 32 of the  
28 institutions within the state of California. I know that we

1 brought another institution on line; 33 are on line total. I  
2 don't know, but it wouldn't surprise me if, in fact, Cal has  
3 made that visit.

4 He is the type of individual whom I've had the  
5 opportunity to engage with. He recognizes, as we all recognize,  
6 that by the year 2000, we are going to run out of beds in our  
7 correctional institutions.

8 He is an individual who today serves in the  
9 capacity. There are changes occurring. I'm here to ask that  
10 you confirm his nomination. He brings, I think, the type of  
11 stability, management style, but more importantly, I think the  
12 tenacity and the commitment to making some changes that improve  
13 a system that is very costly to the State of California, but  
14 more importantly, a system that will be fair in the  
15 implementation of corrections.

16 I'd ask that you support him, and you'll hear  
17 from him. I'm sure you're going to ask him all the right  
18 questions.

19 Having said that, Mr. Chairman, I thank you for  
20 the opportunity to introduce him to you.

21 CHAIRMAN BURTON: Thank you very much, Senator  
22 Polanco.

23 Sir.

24 MR. TERHUNE: Thank you for having me here today,  
25 and congratulations, Senator Burton.

26 CHAIRMAN BURTON: Thank you very much.

27 MR. TERHUNE: Something was said about my having  
28 all the answers. I'm going to start out -- I have a prepared



1 statement -- but I'm going to start out by stating the one thing  
2 that's made me pretty humble during last four-and-a-half months.

3 The last time I was before this group, I had come  
4 up for confirmation to be Youth Authority Director, but I came  
5 into the job with about 33 years of experience. I knew  
6 everything about the Youth Authority.

7 The thing that probably concerns me most is,  
8 after four-and-a-half months, I am appalled at how little I do  
9 know about the Department of Corrections. It's a big operation.  
10 I've worked hard, but it's a big operation. I wish personally  
11 my knowledge was at my satisfaction level. I don't have it.  
12 I'll try and answer all your questions as we get in it today.

13 Thank you for the opportunity to come before you  
14 today. I've spent more than 35 years of my life working in some  
15 capacity within the criminal justice system.

16 My educational background includes a Bachelor's  
17 Degree from California State University, San Jose; a Master's  
18 Degree in social work from the University of California,  
19 Berkeley.

20 I started with the California Youth Authority in  
21 1956 as a parole agent. I spent the next 35 years promoting to  
22 various positions of greater and greater responsibility within  
23 the Youth Authority. These positions included Superintendent of  
24 four facilities, Deputy Director of Institutions Operation,  
25 Deputy Director of Parole Services.

26 Finally, in 1987, I was appointed to the position  
27 of Director of the California Youth Authority. I served in that  
28 capacity until I retired from state service in 1991.



1           While in retirement, I worked for several years  
2 as an institutional site inspector on the conditions of  
3 confinement in correctional facilities for a firm in Cambridge,  
4 Massachusetts.

5           In 1996, I was elected, or selected, I guess, to  
6 be Mayor of a small town up in Amador County, the City of Ione.  
7 I can tell you that after spending my career in criminal  
8 justice, being a local government official brings a whole new  
9 perspective to the concept of being a good neighbor with a state  
10 prison and a state youth correctional facility. It also brings  
11 to light what is meant when your constituents come in in an  
12 uproar about an escape, or you find yourself in conflict with  
13 the California Department of Corrections and embroiled in a  
14 lawsuit.

15           Frankly, I have seen the other side of the  
16 correctional system. I've seen it from the receiving end.

17           In August of 1997, I resigned from this position  
18 when Governor Wilson asked me to assume the duties of Director  
19 of the Department of Corrections.

20           Once I became Director of the Department of  
21 Corrections, I felt that my first priority would be to go to the  
22 field and meet with staff and to do an initial assessment of all  
23 33 state prisons. I gave myself six to eight weeks to  
24 accomplish that task. I finished it in seven.

25           Because we do have 33 prisons located throughout  
26 the state, and each prison has its own particular mission, it is  
27 impossible to provide an overall statement about them.

28           What I can do is offer you a perspective of what

1 I felt I needed to accomplish during my assessment, and any of  
2 the concerns that may have arisen as a result.

3 I believe that the first place I needed to see  
4 was Pelican Bay State Prison. This is our maximum security  
5 facility. There were several past issues at Pelican Bay that  
6 had put the Department before a federal court as well as subject  
7 to media interest. I needed to see for myself any problems  
8 experienced at Pelican Bay, and to see whether they were fixed.  
9 If they were not fixed, to find out what was being done to fix  
10 them.

11 It really pleased me with what I saw at Pelican  
12 Bay. We have come a long way in the area of providing secure  
13 setting for extremely violent felons, California's worst and  
14 most difficult offenders.

15 I would also like to add that while at Pelican  
16 Bay, I met the ideal person to fill the position of Chief Deputy  
17 Director of Field Operations, and that person was Steve Cambra,  
18 then Warden of Pelican Bay. He really showed me a lot as to  
19 what he had done at that facility.

20 The next institution I visited was California  
21 State Prison, Corcoran. This was another institution with a  
22 recent troubled history. I wanted to ensure that the problems  
23 there were being addressed and solved.

24 I am very comfortable with the California State  
25 Prison, Corcoran, and it is headed in the right direction under  
26 the firm and reasoned leadership of Warden George Galaza.

27 I would like to point out that it was not just  
28 because these two institutions had made it into the media that

drove me to these places. What drove me was that these two places had experienced some past problems. I wanted to determine what caused the problems, and I wanted to see what could be done to prevent similar problems at institutions throughout the system.

I also wanted to determine if the resolution to these various problems in the prisons could also be applied to others. I see it as more than a preventative style of management. My personal view is that many of the security procedures at Pelican Bay and Corcoran should be extended to other prisons with high security prisoners.

After touring the two maximum security prisons, I set out to visit the rest of the institutions. I needed to see that we, as a department, were taking care of the tasks of housing inmates in a safe and secure manner, in addition to properly addressing public safety.

The primary focus of my tours was to first determine the level of security was being adhered to at all the institutions, and I was very pleased with what I saw. I saw all the medium and maximum security prisons. Nevertheless, the Department has experienced several escapes from our camps and minimum security facilities. The two escapes from medium security facilities had also occurred in the last year.

Since the situation is not acceptable, we needed to find the best course of action to diminish this area of risk to the public. I currently have staff looking into additional security measures that can be utilized in these areas.

During my tours, I also focused my attention on



1 the level of medical and psychiatric care available for inmates  
2 incarcerated in the Department of Corrections. The level of  
3 care at all CDC institutions is very acceptable, in my opinion.  
4 I am confident that we can offer prisoners of the state  
5 correctional system the basic medical and psychiatric care that  
6 we are required to provide.

7 Frankly, I've seen extraordinary changes in the  
8 medical and psychiatric care since I left in 1991.

9 The extent of available programing in CDC inmate  
10 population was another part of the operation I wished to target  
11 in my tours. I believe that inmate programs have varied degrees  
12 of importance. First and foremost, the diverse educational and  
13 vocational programs can provide the needed skills and attitude  
14 to support inmates towards their positive reintegration into  
15 society. The more comprehensive the program, the greater the  
16 likelihood of successful reintegration.

17 Finally, I would like to address my greatest  
18 concern from the visits I made to the prisons. I can sum it up  
19 in one word: capacity. It appears certain to me that we are  
20 going to run out of bed space early in the year 2000. I have  
21 walked through every gymnasium in the state. Virtually every  
22 gym has inmates housed in them. Most of the inmates are in  
23 double or triple bunks, lined up in rows like crops. In some  
24 gyms, there is barely enough room to walk between the rows, and  
25 visual observation can be described as inadequate at best.

26 This is the future of California Corrections  
27 unless reasonable solutions can be reached. I believe that  
28 every alternative needs to be explored for the future housing

1 needs of California's convicted felons. I see some viable  
2 options for the low level minimum security inmates, but the only  
3 solution for the higher level inmates is more secure bed space  
4 and secure institutions.

5 I know that the road to addressing new beds in  
6 the state's prison system is rocky. I know that passions run in  
7 many directions on this subject.

8 I believe that regardless of our point of view on  
9 issues of alternatives, financing options, and rehabilitation  
10 programs, we need to add beds to this system. We need to do  
11 this to protect the public. We need to do it to protect the men  
12 and women that work in the system, and by no small measure, also  
13 protect the inmates that have to live in these facilities.

14 My door will always be open to discuss any form  
15 of proposal that enables us to protect those at risk within the  
16 criminal justice system.

17 Let me close by telling you that, overall, the  
18 prisons are in good shape because most are well designed. And  
19 most importantly, we have good managers and good supervisors,  
20 and an outstanding group of dedicated staff.

21 I am happy with the level of security in our  
22 prisons, and we have a good health care delivery system and some  
23 valuable inmate programs in all the institutions.

24 We just need to make sure that we have room to  
25 accommodate the inmates that will be coming into this system.

26 With that, I'll end my prepared comments.

27 I think some of the issues that you'll bring up  
28 are things that I would like to talk about. So, as I said



1 before, it's a large system, and I met some interesting people  
2 going around the line staff.

3 To me, the California Department of Corrections  
4 and the concern that you have, frankly, are only going to be  
5 fought and they're only going to be settled by the Director of  
6 Corrections being out in the field and talking to the people.  
7 We've got staff out there.

8 We see some things in the paper. We have 43,000  
9 employees, and there's going to be a situation here and there,  
10 whether it be a manager, whether it be a line staff member, but  
11 the people I saw out there have a lot of pride. They want to do  
12 a good job. Frankly, it's probably one of the most difficult  
13 jobs I've ever seen.

14 In some of those gymnasiums I went into, there's  
15 two officers there. There may be 300 people sleeping in that  
16 gymnasium.

17 I have to say, when I go around and talk to those  
18 officers, I ask, how did you get here? A good part of those  
19 people -- in fact, I'd say 99 percent of them -- said, we're  
20 here because we want to be here. They have a choice in a lot of  
21 cases where they can work under gun coverage in a Secure Housing  
22 Unit, but the people I found in those gymnasiums liked to be out  
23 there because they can talk to inmates. They can work out  
24 problems. To me, that's where the solution is. And there's  
25 people that are holding those facilities together by virtue of  
26 the fact they do interact, they do care for the people. They  
27 identify and do as much as they can.

28 I did not expect to find the pride. I did not

1 expect to find the degree of commitment in the Department of  
2 Corrections because of its size, its vastness. I really  
3 thought because of the size of facilities, there would be a  
4 general indifference to what happens in there. I found a lot of  
5 officers.

6 CHAIRMAN BURTON: It's because of the top-flight  
7 leadership.

8 MR. TERHUNE: That's right; that's what it is.

9 But anyway, I'm very proud to be here. I have an  
10 opportunity. To me, it was the opportunity to finish out a  
11 career that I very much wanted, and thank God, the Governor  
12 asked me to do it.

13 CHAIRMAN BURTON: Senator Hughes.

14 SENATOR HUGHES: You talked about your visit to  
15 Pelican Bay. After going there, what did you decide you could  
16 do with an impossible situation, a situation that had so much  
17 violence? How did you feel after you left there? What did you  
18 commit yourself to do or try to do to help alleviate a situation  
19 like that?

20 And what do you think about the double celling  
21 policy?

22 MR. TERHUNE: Let me take the first part of it.

23 The first thing that we looked at, we talked  
24 about, was what were the procedures? What were the policies?  
25 How well did the staff understand the escalation of force, how  
26 you use force in a facility like that?

27 I have good reason to believe that that was the  
28 problem, and I say that in the past tense. The thing that

1 convinced me that the Warden knew what he was doing was that he  
2 had a very clear-cut set of policies of how you use force.

3 As you walked around talked to the line officers,  
4 there was no doubt in my mind, they understood what was policies  
5 were and how they would be applied, and probably more  
6 importantly, the rationale for it. Why you would get -- when  
7 and why you would have to kill somebody. And it was very clear  
8 to me that that message was over; that that is absolutely the  
9 last thing that you do. And they knew what the steps were to  
10 get to that point.

11 The other item, California is the only state, I  
12 believe, right now -- and I could be wrong -- that is double  
13 celling in the SHUs and Administrative Segregation.

14 If I knew where there was some spare space -- and  
15 I guarantee you, I walked around, and we are aren't squirreling  
16 away any cubby-holes where you could sleep people. I guarantee  
17 you that.

18 We've got 2,000 right now, 2,000 cells that are  
19 dedicated to Security Housing Units. We've got 3,000, roughly  
20 3,000 people in them. So, to go into a single cell mode in  
21 those facilities, we need another thousand beds. We don't have  
22 another thousand beds.

23 I think I'm comfortable with the procedures  
24 they're using. The case -- the officers, the lieutenants --  
25 lieutenants are the key, and the captains, in making the system  
26 work. They go over the case factors. They go over them in  
27 great depth, and eventually they sit with two people that are  
28 going to bunk together. They sit them down. They talk it over.



1 They go to find out if they've ever bunked together; what their  
2 gang affiliations are. They go through all that kind of  
3 process, and eventually, they get a contract signed. Say, hey,  
4 Cal. John wants to bunk with you. You sign the contract.

5 We have some people that lie. Some of the  
6 inmates, they're going to say, hey, we can live together, and  
7 they have no intention of fulfilling that contract. And we  
8 certainly have some violent ones, and there's been a result.

9 It bothers me. Frankly, if there's a way of  
10 getting out of that, and I think this is the question you're  
11 answering [sic], Senator, I'll do it. I think to me, that's one  
12 of the highest priorities.

13 SENATOR HUGHES: Do they ever have like a trial  
14 period to say, we'll let you guys stay together for six months  
15 and see if it works out? How frequently --

16 MR. TERHUNE: Oh, it's more often than that.  
17 It's reviewed every month.

18 SENATOR HUGHES: A month?

19 MR. TERHUNE: Yes, when they come in for their  
20 unit classification, they go over and say, hey, you folks still  
21 want to bunk together? To me, that's essential.

22 But the thing is, it happens -- or there is a  
23 pattern that it seems to happen pretty fast. If it's going to  
24 happen, it's going to happen right away.

25 There have been, I think, some exceptions where  
26 they've been there a long time, and I guess as anybody's been in  
27 a marriage for a long time, every once in a while, I guess you  
28 know that you can get some tensions going.

1           SENATOR HUGHES: I know the institutions have had  
2 a problem, too, with violation of the Americans with  
3 Disabilities Act. There's currently a lawsuit.

4           What is the status? Do you have any idea of what  
5 the status of that lawsuit is?

6           MR. TERHUNE: Again, there's some things I know a  
7 little bit about. I certainly don't know -- I'm not comfortable  
8 with my depth on this.

9           Yes, we're in the lawsuit on that particular  
10 matter. And at this point, I'm personally looking at options.

11           We don't have the capital outlay money to do the  
12 corrections in some of the existing facilities. So, some of our  
13 facilities have accommodations already completed. So, what we  
14 are trying to do to see if we can find a way is, that we make  
15 the services available.

16           Example, if somebody has a disability, and the  
17 facility that has a drug program isn't adjusted to accommodate  
18 for this disabled person, I'm going to try to move the services  
19 to where they have been converted. That's where we are right  
20 now. We've taken a look to see what we can do.

21           I think we'll be talking to you during the budget  
22 hearings on this to see if that's something that would be  
23 acceptable. As I understand, as we speak, probably the  
24 attorneys are talking about what our approach is going to be.

25           I think we can do that. I think we can do some  
26 things right now.

27           To me, if we have some facilities that  
28 accommodate disabled, why can't we bring the services, the



1 programs, to where the accommodations are made.

2 SENATOR HUGHES: Was it not true that at some  
3 point in time the Department was pursuing a change in the  
4 federal statute?

5 MR. TERHUNE: It still is.

6 SENATOR HUGHES: It still is vigorously?

7 MR. TERHUNE: Some things I deal with, and some  
8 things are dealt at a higher level. Yeah, I think it's probably  
9 being explored vigorously.

10 SENATOR HUGHES: How does the Department actually  
11 identify ADA inmates?

12 MR. TERHUNE: For the medical and the  
13 psychiatric, the assistant comes in in our 13 reception centers.  
14 There's clinical staff that go over. They administer tests.  
15 They do the psychologicals. They run the medical test.

16 That area I'm very comfortable with. It's done,  
17 and the monitors have been watching that in the various lawsuits  
18 that we have. And they've taken a look at it, and we seem to  
19 pass muster pretty well.

20 The biggest problem, I'll tell you right now, is  
21 recruiting and retaining psychiatric and medical staff. If I  
22 have a wish, it would be that we could, frankly, pay people more  
23 in these problem classifications. We can't get social workers.  
24 We have hard time keeping psychiatrists. Those seem to be the  
25 two problem classes. Undoubtedly, there's probably some  
26 others.

27 The area, and it'll come up at discussions  
28 probably in some of the hearings this year, is the

1 identification of people coming in that are mentally retarded  
2 and developmentally disabled.

3 SENATOR HUGHES: How do you think this really  
4 affects the operation of the prison system? Does it have a  
5 major effect or a minor effect? Is it a major problem for you?

6 MR. TERHUNE: I was used to a system where we did  
7 identify them, because it was very clear in the Youth Authority  
8 that we had to do it.

9 I think the only time that I ever had to -- I  
10 think only time I ever really lost a lawsuit was around that  
11 particular issue. It was an oversight, and as a result, we  
12 agreed to some things. They were good things, because the  
13 youngsters that came into the system really needed it.

14 I've talked to some officers, and I did know of  
15 some cases that were out there that were developmentally  
16 disabled. As I went around and talked to the people on those  
17 housing units, it was very clear to me that the officers knew  
18 who had to be given some special attention. Now, these are the  
19 ones that maybe were very obvious.

20 There may be some in there that aren't as  
21 obvious, because the one thing that we have found is that  
22 persons with this kind of disability have a way of masking it at  
23 times. They can put on a facade and it's pretty hard to pick  
24 up. How good we are in this area, I just don't know.

25 I do guarantee you this, that within the  
26 resources that we have, we're trying to come up with an  
27 identification system to spot the people as they come to the  
28 system.

1 CHAIRMAN BURTON: May I ask a question?

2 How or why would a developmentally disabled  
3 person in a prison want to mask being smart?

4 MR. TERHUNE: It's something, I think, they come  
5 up with, I have felt sometimes --

6 CHAIRMAN BURTON: In other words, they were  
7 masking it on the outside?

8 MR. TERHUNE: Well, before. They didn't develop  
9 when they came in the system.

10 CHAIRMAN BURTON: I mean, acting like -- I got  
11 it. Thank you.

12 SENATOR HUGHES: Now, there was a big problem  
13 with grooming at Folsom State Prison. What's happened recently?  
14 Is there anything being done about that situation?

15 MR. TERHUNE: No. The Department is moving ahead  
16 with the grooming standards. I believe -- I'm going to put  
17 rough estimate -- that we're probably one-third into it, or  
18 half.

19 Couple interesting things did happen. At three  
20 of the prisons, the inmates said, well, we won't cut our hair  
21 for you, but we will cut our hair for some youngsters. So what  
22 they did is, they bundled up the hair and sent it off. There's  
23 apparently two groups that collect hair and make wigs for  
24 youngsters that have chemotherapy. So, it's being cleaned, and  
25 it's being boxed and sent off to them.

26 But at this point, we're moving ahead. There  
27 hasn't been in the last few weeks any resistance, strong  
28 resistance, that I know of.

1                   SENATOR HUGHES: I'm glad to know that something  
2 positive is coming out.

3                   MR. TERHUNE: That's one of the positive things.

4                   SENATOR HUGHES: That's really good.

5                   You did tell me to ask you that question; didn't  
6 you?

7                                   [Laughter.]

8                   MR. TERHUNE: Thank you.

9                   SENATOR HUGHES: What about weights? Are all  
10 weights being removed?

11                   MR. TERHUNE: The weights were gone as of this  
12 second, and we are -- the substitute, the exercise bars and the  
13 workout stations, are being put in.

14                   SENATOR HUGHES: Thank you.

15                   CHAIRMAN BURTON: Senator Ayala.

16                   SENATOR AYALA: Let me indicate that I have had  
17 the occasion to visit and converse with Mr. Terhune since he  
18 took office four or five months ago. We do have number of  
19 prisons in my district, and a problem had surfaced, and I want  
20 to say that Mr. Terhune has handled it very professionally, and  
21 that it was a job well done of those problems that surfaced  
22 since he took office.

23                   Mr. Terhune, I see in your bio that you worked as  
24 a correctional consultant for ABT Associates of Cambridge,  
25 Massachusetts from '91 to '94, that you were a site visitor for  
26 the United States Senate, studying "Conditions of Confinement of  
27 Juveniles Study."

28                   What conclusions did you arrive at with that?



1 What was the study about?

2 MR. TERHUNE: Well, the study was authorized by  
3 the U.S. Senate to go out to the field, to visit throughout the  
4 United States. I happened to get most of the western states  
5 except California. To take look and see what the conditions of  
6 confinement were in terms of various standards, generally the  
7 American Correctional Association standards, of how juveniles or  
8 young adults were being held in facilities throughout the  
9 states.

10 Frankly, after going out and taking a look, some  
11 of the places that were supposedly to be the best -- best states  
12 in the United States, didn't look quite in a good. They really  
13 didn't.

14 And part of the process was going out, and I  
15 would live for about three days in that facility. Get up when  
16 the inmates got up. Ate with them; stayed with them; stayed in  
17 the facility until they were put down. To get a feel of how  
18 they were treated, what the caliber of the staff training was,  
19 what their procedures are, how many lawsuits they had, how they  
20 were fed, what the visiting procedures were.

21 It was really to do an audit in terms of the  
22 standards as to how well they were operating. Then, I would  
23 make a report, and that eventually went on to the U.S. Senate.

24 SENATOR AYALA: I understand that the State of  
25 California has the highest parole revocation rate than any other  
26 state. One-third of the prison space is taken up by those whose  
27 parole had been revoked.

28 What are we doing wrong? I know that's not your



1 particular field, but how can we improve that?

2 MR. TERHUNE: Let me back up a bit on this.

3 I've been around for a few years. I remember the  
4 days, frankly, when we used to pride ourselves on having a 20  
5 percent violation rate.

6 Well, there would be a few philosophy. A new  
7 board would come in, and all at once, your violation rate would  
8 go up to 40 percent. Another administration would come along,  
9 and your violation rate would go back 20 percent.

10 We weren't doing anything a heck of a lot  
11 different. It was the same staff, the same programs and  
12 everything else. It's a change in the attitude towards  
13 accountability.

14 There was a period of time that you couldn't get  
15 a parole violation if you had back-to-back armed robberies. I  
16 kid you not. There was a time --

17 CHAIRMAN BURTON: You wouldn't need them, would  
18 you? I would assume you have a trial and do some pretty heavy  
19 time for your back-to-back armed robberies.

20 MR. TERHUNE: Yes, but there were also a lot of  
21 times, you know, you can have a fairly serious offense, and this  
22 was many, many years ago, where you could go into the judge in a  
23 juvenile court, and his staff would say, hey, handle it as a  
24 parole violation.

25 And then there would be a change. And any time a  
26 person came in with a reportable offense, they would be  
27 returned.

28 Right now, California is holding parolees

1 accountable for their behavior. It's very clear. It's out  
2 front. The regulations are out there.

3 And this was talked about in the previous  
4 confirmation hearing. Right now, about two-thirds, I believe,  
5 of our parolees or violations are coming in without new terms,  
6 meaning it's a technical violation. That's been going up.

7 At the same time that those are going up, the  
8 number of returns with new terms are going down. There seems to  
9 be an inverse relationship. As you're pulling people off  
10 parole, pulling them in before they commit a serious offense,  
11 they don't come in with the new terms.

12 So, in a sense, you could argue that the attitude  
13 is, hey, we're preventing new offenses by bringing them in  
14 earlier.

15 SENATOR AYALA: You're saying the status quo is  
16 doing the job?

17 I'm told that if we had a way to keep these minor  
18 violators from parole violations, that we wouldn't need any more  
19 prisons because one-third of those in prison today are parole  
20 violators.

21 I know what you're saying, but are we getting a  
22 different type of criminal out there that needs more  
23 surveillance, and bringing them back as soon as they violate the  
24 parole? Are we doing something that we weren't doing before?

25 MR. TERHUNE: Let me just talk a little bit about  
26 some changes.

27 I told you about I was pleased with what I saw in  
28 the medical and psychiatric services in the Department of

1 Corrections.

2 There are some things that do bother me that I  
3 see. I don't think I can do anything about it, but maybe it's  
4 some of things we can reason out together.

5 When I left in '91, parole caseloads were 52 to  
6 one. That means, with that kind of a ratio, that parole agents  
7 can go out, do more in terms of brokering services, get people  
8 in drug programs, provide more contacts, field contacts, provide  
9 more kinds of support systems.

10 I come back now, and the parole caseload is  
11 something like 82 to one. It's harder to come up with a decent  
12 parole program.

13 I am a firm believer that parole services, a good  
14 parole program, with parole agents out, with some resources,  
15 some money to buy a drug program, a decent placement, some help  
16 in providing jobs, can keep people out. But you have to come up  
17 with a decent program.

18 If I was a board member, and we couldn't come in  
19 with a decent parole plan that covered public safety, provided  
20 supervision, provided accountability, I wouldn't continue that  
21 person on parole. I'd revoke him.

22 It's Parole's job, it's Department of  
23 Corrections' job, to come in with alternatives, reasonable,  
24 safe, public safety alternatives to the parole board.

25 And frankly, I've found over the years, parole  
26 board -- if you come in, and you come in with a decent plan, and  
27 able to deliver on it with credibility, they'll go along with  
28 you. If you can't provide that, then they are accountable to



1 the public. They have to do what they have to do, and they  
2 revoke them.

3 SENATOR AYALA: I raised the question of those  
4 electronic monitoring devices with another gentleman. You  
5 raised your hand. Would you be willing to answer that?

6 MR. TERHUNE: We have 15 today on electronic  
7 monitoring.

8 SENATOR AYALA: Fifteen out of all the people out  
9 there? The Youth Authority has many more.

10 MR. TERHUNE: I believe so.

11 SENATOR AYALA: I don't mind saying publicly that  
12 I'm not happy with the way they do it. They start monitoring  
13 some of these people at five o'clock on Friday. They don't pick  
14 them up until Monday when they come back to work. There's a  
15 matter of record that some of these have committed murder and  
16 rape during that weekend. And apparently the Director's happy  
17 with that, if that's the best we can do.

18 I saw him on t.v. the other day indicating that  
19 we pick it up as soon as we can.

20 I don't think they should have one day. In fact,  
21 when they turn them loose in the daytime, they do whatever they  
22 want. There's records of them having committed murder during  
23 the time they're supposed to be working.

24 But you only have 15 of these?

25 MR. TERHUNE: The 15 we have, they're on  
26 constant. They're being read. These are high notoriety cases,  
27 and it's a supplement to the parole plan. It's not in lieu of  
28 anything else.

1                   SENATOR AYALA: You're not involved to a great  
2 extent?

3                   MR. TERHUNE:       No. I think there's 71 that  
4 will be coming out on the monitoring. We're looking at, I  
5 think, three different models. We're doing one right now, I  
6 think, a wristwatch arrangement. There's 80, and that test will  
7 be up, a 90-day pilot program, will be up the end of this month.

8                   SENATOR AYALA: Your Department has proposed an  
9 additional one-and-a-half million to conduct investigations of  
10 criminal activity and other serious misconduct by departmental  
11 employees.

12                   You're talking about correctional officers that  
13 you have to investigate.

14                   MR. TERHUNE: Managers, supervisors.

15                   SENATOR AYALA: Why do you need that much more  
16 for investigative purposes?

17                   MR. TERHUNE: Yes.

18                   When the Governor talked to me, one of the things  
19 he asked me to do was, if I took the job, he wanted me to make  
20 absolutely sure I took a look to make sure that we have a well  
21 staffed -- and he used the term, well staffed -- and well  
22 operated internal affairs system.

23                   I was very pleased that the foundation had been  
24 done. I didn't hire the gentleman that hired a commander out of  
25 the Oakland P.D. That was formerly with the internal affairs  
26 system there.

27                   The Department had taken resources and put, I  
28 believe, it's 40 investigators on. And currently, as I speak,



1 each investigator has 12 assigned cases, and each one of those  
2 cases sort of average out, it's going to take about 80 hours.

3 I meet every morning that I'm in the office with  
4 the head of Internal Affairs. I'll give him all the resources  
5 that I can.

6 Yes, we have a bunch of investigations out there,  
7 and it ranges all the way from a line officer to a warden. And  
8 they're being looked at.

9 To me, there's two things that you can do for  
10 staff. And that is to have a timely, well done investigation to  
11 prove that the person is innocent of the charges or guilty of  
12 the charges, whatever it happens to be.

13 The Department, I feel, needed a separate  
14 internal affairs system, not require that the Special Services  
15 Unit that handles inmate investigations, don't blend the two  
16 together. Have them totally separate. There's a basic system.

17 We're coming in and asking for some more because  
18 there's a workload argument. I hope we can get it. I'll tell  
19 you one thing, that is one that's very high on my priority, to  
20 get it well staffed.

21 SENATOR AYALA: But 30 positions is a major  
22 augmentation.

23 Do you find that we're not doing a good job of  
24 investigating, or a poor job, or none at all?

25 MR. TERHUNE: There's a backlog. You see, this  
26 is the thing. There's so many cases out there that should have  
27 been addressed. They were identified, but just the process of  
28 getting them done.

1 I had some shell shock coming into this job. I  
2 was used to a department that was much smaller. The amount of  
3 investigations, the amount of time that I'm spending on it,  
4 because to me it's important because an officer's career is on  
5 the line if they don't have a well done investigation.

6 I guarantee you, and I'll guarantee the Budget  
7 Committee, if it proves that it's too much, I'll be the first  
8 one to come in and say, hey, you can have these positions back.  
9 Because there is a possibility, once we get over this hump, all  
10 these cases that are out there, this backlog, it may drop down.

11 And I guarantee you, I will come back and say, hey, take the  
12 position.

13 But right now, those positions are over assigned.

14 We have cases that I wish were closed up right now, and they  
15 are not, and they aren't even close to getting to be addressed.

16 SENATOR AYALA: Is there a statute of limitations  
17 for these cases?

18 MR. TERHUNE: Yep, three years. And there are  
19 cases that we may investigate, but in a way the whole thing's  
20 going to be academic because it's passed the statute of  
21 limitations.

22 There isn't a statute of limitations, I don't  
23 think, on the exempt employees. So, in some cases, I would go  
24 ahead and do it just for that reason.

25 SENATOR AYALA: I have no more questions, Mr.  
26 Chairman.

27 CHAIRMAN BURTON: I've got a few.

28 I'm sort of troubled how you and the last person

1 either justify or rationalize these technical violations,  
2 because if we violate somebody from not showing up at a meeting  
3 with his parole officer, we've prevented triple murder. I don't  
4 buy into that.

5 What I would like to know, and I know you don't  
6 have it here, but I've seen the kind of statistics that can be  
7 generated, is the offense that first puts the person in jail or  
8 prison. And I'm talking about people returned on technical  
9 violations that Senator Ayala was talking about.

10 This is a big debate that we have. And many,  
11 including Senator Lockyer, who's at least been a leader in this  
12 area, that we got whole lot of people in these prisons on techs,  
13 that if they weren't there, you know, there might be room to get  
14 somebody out of the gym.

15 So, what was the offense that put them in prison,  
16 and what was the violation that sent them back? In other words,  
17 you have a XX murderer or child molester who always did that  
18 when he or she was drunk, and then they got picked up for being  
19 drunk. That's somewhat less of a technical violation than  
20 somebody that stole two cars and missed a deal, if you get what  
21 I mean.

22 Now, what are they doing, and what programs do  
23 you have? Literacy programs? Do you have enough money for  
24 literacy programs within the prison, or do you need more? When  
25 you come in with a budget, are you going to ask for that?

26 I don't mean this critically of you, but because  
27 of necessities, that's going to take a back line somewhere.

28 MR. TERHUNE: We don't have any package coming in

1 this year in terms of the literacy.

2 CHAIRMAN BURTON: Doesn't that sort of help?  
3 When they get out, they may not come back?

4 MR. TERHUNE: We are taking a look right now of  
5 what we can do with our existing resources to beef up the  
6 literacy program. I will be getting a report, hopefully in a  
7 month, on that particular issue.

8 We have some programs.

9 CHAIRMAN BURTON: I know. My brother taught  
10 school at San Quentin for 20-some years.

11 MR. TERHUNE: There aren't enough.

12 We've got 20,000 people, inmates out there, with  
13 no programing. There is no program. They aren't in vocational;  
14 they aren't in academic. There's nothing out there.

15 CHAIRMAN BURTON: What would it cost to take care  
16 of --

17 MR. TERHUNE: A bundle.

18 CHAIRMAN BURTON: Well, what?

19 MR. TERHUNE: Well, for one institution, I had  
20 looked at -- if we took one institution and totally programmed  
21 it so that everybody had some kind of assignment, whether it be  
22 literacy, whether it be in vocational --

23 CHAIRMAN BURTON: Right, got it.

24 MR. TERHUNE: -- the price tag on that, and that  
25 was for a 5,000 bed facility, I think it was around \$5 million.

26 CHAIRMAN BURTON: In theory, it might be cheap at  
27 twice the price.

28 MR. TERHUNE: Could be.



1           CHAIRMAN BURTON: I think the last person who was  
2 up, when you take a look at the people in prison and you take a  
3 look at the educational component, violent crimes-college  
4 education, unless somebody shot, you know, their spouse or  
5 something, hardly anybody. Community college, hardly anybody.  
6 High school, a few. Under high school, the bulk of them.

7           How about twelve step programs? We tried to do  
8 something, and we were told like there wasn't room. You can  
9 have a twelve step program in a toilet.

10          MR. TERHUNE: Yes, we bring in twelve step.

11          We're increasing -- there'll be another package,  
12 I think, this year we'll be coming in for increasing the number  
13 of drug programs. All of them include twelve step. To me,  
14 that's the one I have seen that has consistently worked.

15          CHAIRMAN BURTON: And you can do twelve step at  
16 no cost.

17          MR. TERHUNE: Because you get a lot of  
18 volunteers. You get all kinds of people come in on that.

19          CHAIRMAN BURTON: One argument, and I forget who  
20 had it -- I think Dick Rainey had the bill -- and, you know,  
21 well, they didn't have the room for these things.

22          And my comment was, you may not have the room for  
23 the Delancy Street Omega Boys' Club model, but you certainly  
24 have the room for AA meetings that can be done at nothing. And  
25 even if there were inmates that couldn't do it, depending on  
26 where you are, but like at San Quentin, there'd be people that  
27 would come over from the community that are in these programs.

28          MR. TERHUNE: And they are.



1                   CHAIRMAN BURTON: You talked about that almost  
2 everybody's double celled?

3                   MR. TERHUNE: Ninety percent of the general  
4 population.

5                   CHAIRMAN BURTON: What was the big problem with  
6 the Polanco bill that said everybody had to be double celled?  
7 There was a lot of opposition to that, that sort of made sense,  
8 but in a way it didn't make sense, because, well, they're  
9 doubled celled, anyway so don't tell us to double cell them.

10                  Now, it would seem to me, and I try to picture  
11 myself, I guess, in jail, for want of a better word. Would I  
12 want to be by myself, or would I want to have somebody to talk  
13 to and play gin rummy to? And I guess I would want the guy to  
14 play gin rummy to when I felt like playing gin rummy. When I  
15 didn't, I'd want him out.

16                  But there should be maybe, given the cost, it  
17 would seem so me there might be some way with the correctional  
18 officers, with the Department, and with Senator Polanco, maybe  
19 there's some kind of solution to do that.

20                  I know there's some people you don't want to have  
21 in the same cell because, oh, yeah, we're going to get along  
22 together just fine. Then the reason they're in there, they both  
23 want to bang each other's head to see which one can kill the  
24 other one first.

25                  MR. TERHUNE: Yes, that happens.

26                  CHAIRMAN BURTON: I would hope, because Polanco  
27 keeps coming back with that bill, and I get tired of fighting  
28 with him, I'd like to see if there's any way.

1 MR. TERHUNE: I think we're together on the  
2 figures at this point. The last I've heard, we've gone over the  
3 figures, and there seems to be agreement. I could be wrong, but  
4 I think we've got a lot of movement. We have a plan.

5 CHAIRMAN BURTON: I think he was almost talking  
6 about the newer prisons, building rooms for two, so to speak.

7 MR. TERHUNE: In a sense, we are.

8 Frankly, the Department was saying, hey, 90  
9 percent of the cells are double. Give us 10 percent just  
10 because of the people that play hell living together. They  
11 can't do it.

12 CHAIRMAN BURTON: A couple other things quickly.  
13 What's the status of the lawsuits with the  
14 Department and the cities?

15 MR. TERHUNE: I'll be meeting tomorrow with the  
16 city people. At this point, we're coming together. I'll meet  
17 with them. What I would like to have them do --

18 CHAIRMAN BURTON: Where's the money going to come  
19 from?

20 MR. TERHUNE: We've found -- I found a little  
21 bit, enough to take care, hopefully, of the first two years.  
22 There is a problem on the other years.

23 CHAIRMAN BURTON: Is that money you're going to  
24 take out of your existing operating thing, or are you going to  
25 come to us for a flat appropriation?

26 MR. TERHUNE: I think we'll try and play both  
27 sides of the street if we can.

28 CHAIRMAN BURTON: Just before I get into one of

1 my pet questions, what's the policy on dental care for inmates,  
2 and specifically the female inmates?

3 I heard you kind of say things were hunky-dory,  
4 and we keep hearing that they're not.

5 MR. TERHUNE: There's a dental plan on every  
6 inmate.

7 CHAIRMAN BURTON: Right, you've got a big plan.

8 MR. TERHUNE: If the teeth, as I understand, that  
9 are needed to eat, they'll get them. If they're doing work  
10 around a tooth that's missing and it would be more of a cosmetic  
11 job, they would go ahead and do it.

12 But, there are a lot them, because I've seen it  
13 in going around, and particularly -- it's a tough one to get  
14 into, but for some reason, I've noticed more dental problems,  
15 missing teeth, in the female institutions than I have any place  
16 else. I don't know whether it's more noticeable or something,  
17 but I have to say it is --

18 CHAIRMAN BURTON: That's why I said specifically  
19 women.

20 MR. TERHUNE: Yes, whether it's --

21 CHAIRMAN BURTON: I'm not saying why it happened.

22 MR. TERHUNE: I'll have to look at that one, but  
23 I am guaranteed that --

24 CHAIRMAN BURTON: Okay.

25 Ruben was ahead of me, but I remember when I went  
26 into the Army. If you had any trouble with a tooth, they just  
27 went whoomp.

28 MR. TERHUNE: You got it, or they'll fill it

1 without Novocaine. Have you had that experience?

2 CHAIRMAN BURTON: On the so-called, and it was  
3 never really called the Inmates Bill of Rights, but on the  
4 legislation that went from Public Safety to recently related to  
5 legitimate interests, what's reasonably related to taking away  
6 law libraries. What's the legitimate penal interest in that?

7 MR. TERHUNE: At this point, and I don't have all  
8 the information on this one, my understanding at this point, the  
9 Supreme Court has come down and said that the law libraries  
10 that, frankly, I was involved in putting in years ago, far  
11 exceed that that's required.

12 CHAIRMAN BURTON: I'm asking you, what is the big  
13 deal? In other words, does it make the prison safer? Does it  
14 make the guards feel better? Does it make somebody feel better  
15 if you limit their access to law books and such?

16 MR. TERHUNE: It's a dollar and cents issue.

17 CHAIRMAN BURTON: No, you're taking stuff away.  
18 We're not saying they've got Cal. Ap. 2nd, don't get Cal. Ap.  
19 3rd. You're taking Cal. Ap. 3rd away.

20 In other words, you're doing this on a fiscal  
21 basis?

22 MR. TERHUNE: Yeah. The argument that I've heard  
23 is that it's being done on a fiscal --

24 CHAIRMAN BURTON: So you don't have to buy  
25 supplements every year.

26 MR. TERHUNE: Yes.

27 I asked the question, you know, why not leave the  
28 stuff there since we already have it, just not replace it? I'm



1 told -- I'm not an attorney -- that it's more dangerous to have  
2 an out-of-date law book there than it is to have none.

3 CHAIRMAN BURTON: That makes a lot of sense.

4 SENATOR HUGHES: Mr. President, can I get back to  
5 the dental question?

6 How frequently do the prisoners go for dental  
7 checkups? Do they only go when they have a toothache, or do you  
8 have a regular time for them to go for dental exams?

9 MR. TERHUNE: I can't answer that one.

10 SENATOR HUGHES: You know, I don't know whether  
11 it's mandatory. And if somebody refuses and stands up their  
12 dental appointment, what happens?

13 MR. TERHUNE: Can I get back to you?

14 CHAIRMAN BURTON: They'll probably say thanks.

15 SENATOR HUGHES: The reason I'm asking is because  
16 that's costing us money to engage dental services, and then if  
17 the person doesn't show, you know, we still have to pay.

18 I'd just be curious about that.

19 MR. TERHUNE: I'll get back to you on that one.

20 CHAIRMAN BURTON: I'd love to talk to the lawyers  
21 who are advising on law libraries, and what you're doing and  
22 what you're not. I mean, actually in fact, some of the stuff  
23 that they may think is a little goofy would probably be things  
24 law review articles and such, are things that nobody's using.

25 To paper the Supreme Court with appeals, there's  
26 probably somebody who maybe really is interested in learning,  
27 and the more they're learning, the less mischief.

28 The grooming standards, I think the excuses given



1 for that are the dumbest things I've ever heard in my life.

2 Now, if you want everybody to look uniform, I  
3 don't agree, but I can understand that.

4 But if you have a beard, and you have long hair,  
5 and then you escape, and you get a haircut and shave off the  
6 beard, they're never going to find you again.

7 Now, I would posit the question, if I have no  
8 beard, and I have short hair, I put on a wig and a false  
9 mustache, and you're not going to find me again. So, that seems  
10 to me is a very bogus reason for doing that.

11 If you want everybody to look the same, maybe you  
12 do and maybe you don't, but at least that's kind of an honest,  
13 straight-forward answer.

14 I would like to have the number of people with  
15 beards and long hair who escaped, cut their hair, shaved off the  
16 mustache, because I could not recognize Mr. Novey without his  
17 mustache. So, somehow, that brought this about.

18 I mean, that wasn't the reason that's here.  
19 What's the reason for it?

20 MR. TERHUNE: I think it was the last escape out  
21 of Vacaville that that did happen.

22 CHAIRMAN BURTON: How about the guy who escaped,  
23 put on a woman's dress and a wig? That's not the reason.

24 That one escape was the reason for this, I doubt  
25 it.

26 MR. TERHUNE: In going around --

27 CHAIRMAN BURTON: And if you don't know, I'll  
28 accept that, but it was on somebody else's watch.

1                   MR. TERHUNE: I'll give you my personal, and it's  
2 probably not worth that much.

3                   I have watched, in going around, watching  
4 officers have to run their hands through the hair to find out if  
5 there's a shank back here. The rolls that come down in some  
6 cases --

7                   CHAIRMAN BURTON: How about the mustaches? Do  
8 you have to do that to see if they have a razor blade?

9                   MR. TERHUNE: Oh, yeah, you've got to get those  
10 mustaches.

11                  CHAIRMAN BURTON: Razor blade in a mustache like  
12 this?

13                  MR. TERHUNE: Now, with the hair, I have to say  
14 I'm not sure you can really do a shake-down of somebody that  
15 does have the long hair. It's tough to do. You can hide stuff  
16 in there.

17                  CHAIRMAN BURTON: Took them like 50 years of  
18 penal stuff to figure that out?

19                  How about the Sikhs? How about people whose  
20 religion requires beards and things?

21                  MR. TERHUNE: Well, at this point we can, as I  
22 understand it, I'm told we can go across the board.

23                  CHAIRMAN BURTON: You can do anything you want.  
24 Is it right?

25                  MR. TERHUNE: Well, no, we can't do everything we  
26 want.

27                  CHAIRMAN BURTON: Thank God, but is it right?

28                  You know, the Governor gave a great speech to a

1 group about religious freedom, and the next day he was issuing  
2 this thing. And I don't know anybody who, all of a sudden, is  
3 going to, you know, you can take a jaundiced eye if, all of a  
4 sudden, someone who's Irish says, you know, I think I will be a  
5 Sikh so I can have a beard, or something.

6 But it would seem to me that when you're getting  
7 into what could be dangerous, I think just human grounds and  
8 religious, but dangerous ground when you start with people that  
9 it's a deeply held religious belief to have a beard or to have  
10 something, that I would just think it could cause some trouble.

11 Some of the stuff, and I'm not the expert, but  
12 some of the correctional people I talked to are a little bit  
13 antsy about this, that, you know, freedom's just another word.  
14 You keep cracking down on irrelevant stuff, not really stuff  
15 that's safe for the institution, and then you could have a  
16 problem. I mean, you could have a problem that whatever those  
17 things that happened in Corcoran -- and I hope I didn't hear you  
18 right, that that was all done according to regulation.

19 MR. TERHUNE: No, I didn't say that.

20 CHAIRMAN BURTON: Good.

21 But it could be a problem. The weights and the  
22 bar bells, don't know, don't care, never lifted them.

23 I mean, one argument is, but I guess you have  
24 other exercise equipment. People can work out their  
25 frustrations doing something. I guess they can't use the gym  
26 because people are sleeping in it, but doing something.

27 And I know you don't want people to bulk up and  
28 be stronger than the guards, but there should be something.

1 Let's jump rope, a noose, then they'll do that to somebody.  
2 Some type of thing where maybe they could work out some of their  
3 aggressions on equipment.

4 Now, the dress code, blue jeans, blue shirt, all  
5 white, CDC prisoners, who cares. That, to me, I don't think  
6 people cause trouble, except the laundry bills will go up.

7 The packages, I want to know how the people are  
8 selected that families have to buy the stuff from? What kind of  
9 contracts they get? What is the profit margin for them?

10 MR. TERHUNE: Okay.

11 CHAIRMAN BURTON: And isn't there some way that  
12 if a mother wanted to bake a birthday cake for somebody in  
13 prison, that she might be able to do it? You know, maybe you  
14 could x-ray it to see that there's not the old, you know, file,  
15 cake with a file in it. But that's prohibited, right?

16 MR. TERHUNE: I guarantee you on that issue, I  
17 have a big concern as you do on this. We make sure that our  
18 prices are competitive and they can get it --

19 CHAIRMAN BURTON: How about the birthday cake  
20 thing?

21 MR. TERHUNE: That's out.

22 CHAIRMAN BURTON: Why? I mean, I know you could  
23 smuggle something in, but how many people have birthdays on the  
24 on the same day that they couldn't just, you know, put it  
25 through like they do with a piece of mail to the warden that  
26 could be a bomb? They x-ray it.

27 MR. TERHUNE: I'll take a look at it. I hear  
28 you.



1 CHAIRMAN BURTON: I mean, I know they're  
2 prisoners, they did bad stuff, but the more you dehumanize them,  
3 you may as well keep them there for life because I always hope  
4 that anybody that goes to prison comes out better than when they  
5 when they went in, not different.

6 What happens is, and you know, I'm a bleeding  
7 heart, whatever, but I really think, the more you dehumanize  
8 these people, the less shot you have that they can be anything  
9 but worse when they come out. I don't think any of us want  
10 that.

11 I know that they're in prison because they did  
12 bad stuff, but some that you're doing, to me, seems  
13 mean-spirited. It doesn't add anything to the safety.

14 X-ray searches of visitors, that's all right.  
15 That's not body searches, right?

16 Media access, that's Quentin Kopp's bill.

17 Were you, or was it somebody else that's up  
18 today, that was on that Governor's Blue Ribbon Commission?

19 MR. TERHUNE: I was on it. It didn't come up in  
20 the conservation yet.

21 CHAIRMAN BURTON: I read it. So, you were on  
22 that like Rainey was on that, and Mimi Silbert was on that.

23 MR. TERHUNE: That's right.

24 CHAIRMAN BURTON: Are you going to do anything to  
25 help to push for the recommendations?

26 MR. TERHUNE: I talked with Senator Rainey about  
27 that. We are looking into it.

28 CHAIRMAN BURTON: But hardly any have even been



1 --

2 MR. TERHUNE: We put a lot of time into that  
3 process.

4 CHAIRMAN BURTON: Yes, and you had a very  
5 broad-based group, and you came up with some fair stuff.

6 I think part of what Senator Ayala was saying,  
7 and Rainey's pretty smart. He calls them punishment options,  
8 which sounds better than whatever the phrase was that was in.  
9 Alternatives to incarceration are out; punishment options are  
10 in.

11 MR. TERHUNE: That was his term. He coined that  
12 one during the process.

13 CHAIRMAN BURTON: But we need to do something.  
14 That the bad people are there, that hopefully there's something  
15 that makes them better people when they come out. And if they  
16 are never going to be better, then they stay there as long as  
17 law allows.

18 But that people that have a shot -- I mean, I eat  
19 at Delancy Street three times a week. They've got murderers in  
20 there that, because of the Don White decision, got out. There's  
21 very few soft core criminals that work around Delancy Street.

22 I mean, they've got a success ratio that's like,  
23 you know, people ask the first 30 days, they've got about a  
24 90-95 percent of people that never fall back either on drugs or  
25 go to the bucket.

26 So, I do believe in if not redemption, in rehab.  
27 So, I just hope you do that.

28 I think I had one more, which I have no idea what

1 it is. You got my point of view, and I'm sure I'm in a minority  
2 in the house and on the Committee. But I believe that. I  
3 believe.

4 You know, I had two friends murdered. I had my  
5 mother robbed and threatened with rape at knife point when she's  
6 84 years old, so I know something about bad people.

7 But I also know that if we don't do anything  
8 about the people in prison, almost better shoot them on sight to  
9 save the money.

10 Senator Ayala.

11 SENATOR AYALA: I have another question.

12 However, I would like to say that I don't think  
13 it's dehumanizing people to clean up a little bit. We did it in  
14 the service, and we weren't criminals. We came out all right.

15 I don't understand this bit of letting them grow  
16 hair. I think if it's for the safety of the correctional  
17 officer, we ought to do it.

18 I'm not concerned so much about the criminal  
19 who's there because they did something wrong. Obviously, they  
20 were a felony or something.

21 I'm more concerned about the safety of the  
22 correctional officer. And whatever it takes, that's what we  
23 ought to do.

24 We did it in the military. We had to get a  
25 haircut and brush our teeth, and I think we're okay. So, I'm  
26 not too concerned about that.

27 I do have a printout, dated the first of  
28 February, that indicates that there's 19,340 parolees that you

1 don't know where they are. They've been lost up there some  
2 place in the shuffle. We can't find them, 19,340.

3 What are we doing about those people that are out  
4 there loose, doing their thing?

5 MR. TERHUNE: We have parolee at large unit  
6 that's working on it. They're willing -- I believe that number  
7 is going down. It used to be larger than that.

8 We have a unit that's working on it. It's a high  
9 priority with the Parole Division.

10 SENATOR AYALA: You just can't locate them.  
11 Maybe there's an organization out there that would go after  
12 these guys, I don't know.

13 CHAIRMAN BURTON: They know the names, right.

14 MR. TERHUNE: Oh, yes.

15 SENATOR AYALA: You know the names of all these  
16 people that are missing in action?

17 MR. TERHUNE: There's a list.

18 CHAIRMAN BURTON: Let's hope they're not missing  
19 in action.

20 MR. TERHUNE: There's a close tie. There is  
21 organizations now between local police, sheriffs and parole in  
22 terms of working on this group because it's a hot group. Those  
23 are some of the folks that are more apt to --

24 CHAIRMAN BURTON: What I'd like also, following  
25 that, is just like, are they like, you know, car thieves? Or  
26 are they like, you know, aggravated assault?

27 In other words, what level are people talking,  
28 because if they're like violent felons, and you know, really bad

1 actors, having them floating around is not necessarily good.

2 Speakers briefly in support, anybody?

3 MR. SEARCY: Thank you, Senator Burton and  
4 Committee Members, for this opportunity to present some  
5 information to you.

6 My name is Frank R. Searcy, S-e-a-r-c-y. I'm  
7 President of the Chicano Correctional Workers Association.

8 Senator Burton, please let me offer my  
9 congratulations as the victor for this Chair.

10 CHAIRMAN BURTON: Thank you.

11 MR. SEARCY: Senator Johnston is my district  
12 Senator. So needless to say, there was some, a little bit, come  
13 on, Senator Johnston, get it.

14 However, best man won. I think Senator Johnston  
15 and I both agree, yes, the best man won.

16 CHAIRMAN BURTON: The luckiest man won, but thank  
17 you.

18 MR. SEARCY: The Chicano Correctional Workers  
19 Association thoroughly endorses Mr. Terhune for Director,  
20 Department of Corrections. We are aware of his extensive  
21 background in Corrections. We know that he has a reputable  
22 experience, and therefore, that is one of the reasons why we  
23 really support him and endorse him.

24 May I add and may I offer, and this may be my  
25 opinion. When Mr. Terhune mentioned that all his experience was  
26 in the Youth Authority, I think he was maybe being modest and  
27 being humble. And I myself am offering that, because I think he  
28 does have the principles of an administrator, which is very



1 obvious. Otherwise, I do not think that he would have been  
2 called to lead this department.

3 The Department of Corrections right now has  
4 approximately 43,000 members. A few years ago, about three  
5 years ago, the former Director, Mr. Gomez, initiated a program  
6 which was Treatment of People at Herman Topps. Then, as a  
7 follow-up to that program, he also had established a committee  
8 as a team to go out and review the institutions and the parole  
9 divisions to see if that program was working or not.

10 That team has come back and has been able to find  
11 some very good things, not all positives, sometimes negatives,  
12 but that was all right because that then helped the institution,  
13 the warden, and it helped the Director of the Department of  
14 Corrections in correcting whatever had to be corrected, to take  
15 some action.

16 Many times, there was no correction. Things were  
17 moving along the way we would want it to move, the way the  
18 Department would want it to move, and the warden would want it  
19 to move.

20 When Mr. Terhune came in as Director, he  
21 recognized that that program and that team was a very, very  
22 valuable tool as a resource, so he continued it. That team  
23 continues to be in existence, continues to go out to the  
24 institutions, and continues to go out to the parole division  
25 offices in speaking with the employees and the staff members.

26 I am thankful that I can say I am a part of that  
27 team. What we have found is that, yes, there are some things at  
28 times that could be changed, some action could be taken.



1                   When we leave the institution, we give the warden  
2 an exit interview, and we share these things with him. To our  
3 surprise at times, the warden will respond, yes, I am aware of  
4 that situation; yes, we are aware of it and we are doing  
5 something about it. Nevertheless, that information goes to the  
6 Director, and if needed, action is taken on that.

7                   Ladies and gentlemen, what I think I'm trying to  
8 say is that again, Mr. Terhune, having the principles of an  
9 administrator, I think he is very capable, and we support that  
10 he is very capable of being an administrator.

11                   And we ask that you vote for his confirmation as  
12 Director of Corrections.

13                   Thank you.

14                   SENATOR LEWIS: Thank you very much.

15                   Next witness.

16                   MR. MABRY: Hi, I'm Roy Mabry, the State  
17 President for the Association of Black Correctional Workers.

18                   I'd also like to congratulate Mr. Burton for  
19 being the new Committee Chairman. And to Mr. Burton and the  
20 Senate Rules Committee Members, I also am a part of that team  
21 that Frank Searcy spoke about.

22                   I speak for my membership, give one hundred  
23 percent support for confirmation for Director Terhune.

24                   SENATOR LEWIS: Thank you.

25                   Yes, sir.

26                   MR. BAKER: My name is Bill Baker. I'm Mayor of  
27 the City of Taft, which is host to a community correctional  
28 facility.

1 I'm here to support the nomination of Mr. Terhune  
2 to this position. Since his appointment by Governor Wilson, we  
3 have found that he is accessible, much more so than his  
4 predecessor. He is visible. He attended the opening of the  
5 first privately operated federal prison that is located in Taft,  
6 and took time while there to visit our CCF. And it is my  
7 understanding that he has also visited each of the state  
8 prisons.

9 He is willing to discuss what we perceive to be a  
10 problem. He allows a reasonable hearing of a problem being  
11 discussed, even though we may not always agree on various  
12 aspects or the resolution of the problem.

13 He is not hostage to staff, but he questions and  
14 makes independent decisions.

15 He is an honorable person who seems determined  
16 and able to restore this agency. As you are well aware, CDC has  
17 problems every where and few allies.

18 We have observed first-hand the unprofessional,  
19 unlawful, and coercive behavior of this agency. I refer to  
20 these extremely unfavorable traits in this manner: the  
21 arrogance of power over substance.

22 Experiences in the City of Taft are not unique  
23 but common among SB 1591 cities, and also in a significant  
24 number of other prison host cities, including Mr. Terhune's home  
25 city of Ione.

26 His determination and abilities are vital because  
27 CDC is an important agency of public safety, and it must be  
28 restored.

1           He is, in our judgment, the best opportunity CDC  
2 has to regain the credibility of the public, the Legislature,  
3 contract vendors, and prison host cities.

4           In conclusion, I support the nomination of  
5 Mr. Terhune and encourage you to confirm him to this position.

6           SENATOR LEWIS: Thank you very much.

7           Sir.

8           MR. CORCORAN: Thank you, Committee Members.  
9 Thank you for the opportunity to testify.

10           My name is Lance Corcoran, just like the infamous  
11 prison in Central California of 60 Minutes fame. I'm here on  
12 behalf of the California Peace Officers Association, who  
13 represent the men and women who work the toughest beat in the  
14 state around some pretty horrendous people, namely state  
15 management.

16           And while we don't generally provide endorsements  
17 to administrators, and we're not here to do that today, there is  
18 no opportunity on the agenda to take a neutral position. We did  
19 not have an opportunity to bring this before our Board of  
20 Directors before the announcement of the confirmation hearing  
21 today.

22           We did want to get in a little gratuitous sucking  
23 up, if we could.

24           The reality is that Mr. Terhune has been very  
25 willing to take on the issues facing Corrections today.  
26 Recently, he took a trip down to California State Prison at  
27 Lancaster. We had an officer murdered there.

28           And Mr. Terhune was there at 5:30 in the morning.

1 He greeted all of the staff coming in and coming off first  
2 watch, and then walked with the union to go out and visit every  
3 unit, and talked to staff members, and helped them handle their  
4 grief. I think that speaks volumes for his commitment to his  
5 staff members.

6 Department faces says so many very serious  
7 issues, privatization being one of them. Obviously, we are  
8 vehemently opposed to that.

9 But there's also issues that are not quite on  
10 that level, but certainly they affect us on a daily basis.

11 Adequate and unbiased investigations, and I  
12 think that we're seeing a commitment from the administration at  
13 this point to begin working that direction; although, I'm sure  
14 you'll hear folks in opposition that want to bring forward the  
15 discrepancies in the system.

16 Training of staff, currently staff only received  
17 eight hours of official in-service training per year. Most of  
18 that training is towards shooting.

19 Now, if you only train staff to shoot, then  
20 obviously you have a problem if they can't deal with problems on  
21 a personal basis. We'd like to see that expanded.

22 Overcrowding and under staffing, currently  
23 California ranks 46th in the nation as far as inmate to staff  
24 ratios as far as correctional officers go.

25 CHAIRMAN BURTON: That's better than public  
26 education.

27 MR. CORCORAN: Thank you, sir.

28 Of course, we have got the major issue out there,



1 grooming standards.

2 One thing that Mr. Terhune has shown is a  
3 willingness to listen and a very seemingly caring attitude.  
4 That's very much appreciated.

5 So, we do take a neutral position. We are  
6 hopeful that the future will bring positive results.

7 Thank you.

8 CHAIRMAN BURTON: Is there any opposition?

9 MR. BARNES: Good afternoon. My name's Rico  
10 Barnes, B-a-r-n-e-s.

11 MR. BRYANT: My name is Correctional Lieutenant  
12 Shelley Bryant.

13 MR. BARNES: I'm a little bit nervous, so forgive  
14 me.

15 Corrections is a department that is spinning out  
16 of control. We are a law enforcement agency unwilling to  
17 enforce our own rules. It is not enough not to lie, cheat or  
18 steal. We cannot tolerate among us anyone who does.

19 This problem originates with those at the very  
20 top. The staff in the lower rungs who truly wish to succeed in  
21 this climate of debauchery must be willing to lie under any  
22 circumstances or be branded disloyal.

23 In fact, the phrase, "loyalty to management" is  
24 the banner used by administrators to unify disreputable  
25 supporters when a high ranking official has been caught doing  
26 wrong.

27 This alliance brings with it visible rewards.  
28 But as a law enforcement body, our reputation suffers



1 egregiously.

2 I am here in opposition to Mr. Terhune's  
3 confirmation because he has allowed the climate of lawlessness  
4 to continue under his supervision. Mr. Terhune has also  
5 insulated himself from hearing any information about managerial  
6 misconduct.

7 I personally made 18 attempts to speak to  
8 Mr. Terhune from November the 12th, 1997, to December the 2nd,  
9 1997. I even tried to schedule a conversation with him, all to  
10 no avail. Mr. Terhune did not respond to any of my letters, nor  
11 did he answer the Speaker of the House's letter.

12 Lieutenant Bryant sent numerous complaints, even  
13 certified mail, signed and delivered to Mr. Terhune's office.  
14 There was no response.

15 This intentional ignorance is tacit approval of  
16 managerial misconduct and does not go unnoticed by rogue  
17 managers.

18 Mr. Terhune has allowed his wardens to treat the  
19 budget like their personal checkbook, to finance meritless  
20 litigation, pay off what I conclude to be poorly concealed  
21 extortion, and to defend the indefensible repeatedly with  
22 hapless litigation appeals. He has allowed high-ranking  
23 officials to escape punishment that is proportionate to their  
24 involvement in misconduct and is in keeping with good order for  
25 an agency of our size.

26 Administrators who cannot control their base  
27 instincts and passions must be dismissed from state service, no  
28 different than a lower level employee. The ability to do harm

1 with so much power is too great and too expensive.

2 As I near my closing, I would like to show you  
3 credible evidence created by those I criticize today, and in  
4 support of the drastic charges leveled against Mr. Terhune.

5 But please consider this as you deliberate your  
6 choice of the next Director of the largest staff and most  
7 well-funded state agency. Mr. Terhune did not create all of  
8 CDC's problems, and I'm not perfect in my ability to do my job.

9 However, several years ago, Mr. Gomez sat in this  
10 same chamber and faced opposition to his confirmation.  
11 Mr. Gomez acknowledged his detractors and promised to right the  
12 wrongs that they complained of.

13 I submit to you today as an employee in the  
14 prisons since 1985, once Mr. Gomez was confirmed, he did not  
15 keep that promise. You will hear today about change,  
16 transition, inmate population growth, and the complexity of the  
17 workforce.

18 I submit those are constants in any large agency  
19 and must be dealt with during the review phase.

20 If you choose to recommend Mr. Terhune for  
21 confirmation despite what is a questionable record to date, you  
22 are knowingly exposing the work site to abuse, while willingly  
23 opening the largest portion of the state budget to fraud and  
24 fiscal mismanagement.

25 Mr. Terhune personally is not responsible for a  
26 large portion of the issues that I have raised over the past 12  
27 months and that I bring forward to this Committee today. He's  
28 not personally responsible for the acts of wardens at 33

1 institutions and what they choose to do unlawfully.

2 He is responsible, however, that when these  
3 issues are brought to his attention, to make himself  
4 unavailable. To attempt, and his staff below him, attempt to  
5 confuse the issues. The attempt to mislead other committees  
6 that are part of the Senate.

7 And only prior to my coming to this Committee  
8 today was there any response on behalf of some of the issues  
9 I've raised either throughout the year, throughout the years,  
10 and even as late as last night.

11 The first time this Committee heard from me as an  
12 individual was when Mr. Teasdale, Ms. Michel, and Mr. Hurdle  
13 visited Avenal State Prison in 1995, during Warden Madding's  
14 confirmation hearing -- confirmation process. The issues of  
15 lawlessness were addressed in a very lengthy complaint that I  
16 was told made it to the Committee. I'm not going to argue that  
17 point.

18 Since then, and I'm solely talking about  
19 meritless litigation, managerial misconduct, and the frivolous  
20 appeals associated with it, it has increased.

21 CHAIRMAN BURTON: Can you do me a favor,  
22 Lieutenant? You mentioned, I think, three areas, which were  
23 kind of broad.

24 Give me like a specific managerial misconduct; a  
25 specific frivolous appeal. Well, a lot of us think sometimes  
26 appeals are.

27 But, I mean, can you give --

28 MR. BARNES: Yes, sir.



1 CHAIRMAN BURTON: Without --

2 MR. BARNES: I simply had my hand resting here in  
3 case you say, can I see that?

4 CHAIRMAN BURTON: All right, so if you'd need a  
5 citation, okay.

6 MR. BARNES: The issues that I raise surround my  
7 assisting other employees who have been the recipient of  
8 malicious prosecution from within institutions at the hand of a  
9 warden. It is no misconduct on my own part. It's solely that's  
10 retaliation for assisting those in enforcing the rules that we  
11 have in place becomes so abusive --

12 CHAIRMAN BURTON: An example.

13 MR. BARNES: An example would be in 1994, I  
14 represented a gentleman, a sergeant at Avenal State Prison. He  
15 was being punished via a demotion and a suspension.

16 Prior to the action being taken, I notified  
17 Warden Madding in private in an effort to conceal the problem  
18 from the work site and to give him an opportunity to handle it.  
19 Warden Madding went forward with the punishment anyhow. It  
20 turned to what's called a State Personnel Board hearing.

21 Although I was reluctant to do so, I represented  
22 the employee at the State Personnel Board. The Department of  
23 Corrections sent an attorney down.

24 The employee was cleared of all the charges;  
25 however, the Department -- the institution in the interim  
26 decided that I should be the subject of a voluminous amount of  
27 what's called unlawful retaliation.

28 I reported it through the entire chain of



1 command. Every person I could possibly imagine, I wrote to. I  
2 even wrote to various Members of the Senate.

3 Ultimately, after there being no response and no  
4 action, I had to file a lawsuit. One of the things about filing  
5 a lawsuit against an agency the size of ours, we have what's  
6 kind of like a scorched earth policy towards our own rules and  
7 towards the court system.

8 The point is that what I was trying to do was  
9 rectify the situation without having to file a complaint against  
10 the warden and/or file a lawsuit.

11 In the course of the lawsuit, there was still no  
12 action from anyone within my chain of command, up to and  
13 including Mr. Terhune's office.

14 The trial was in September of last year. I won  
15 the trial with a 12-0 verdict in my favor.

16 But what was alarming was, there was no rules, no  
17 policies, nothing presented by the Department to defend their  
18 position, yet they pushed it to trial. In fact, the Warden  
19 testified that when presented with policies, those rules didn't  
20 apply to him, of course, after he violated them. And he said  
21 the person who wrote the rules had over-stepped their  
22 boundaries, exceeded their authority when writing them.

23 While there are many examples sitting here --

24 CHAIRMAN BURTON: And the frivolous appeal was,  
25 they appealed your --

26 MR. BARNES: It's kind of a Catch 22 there, sir.

27 CHAIRMAN BURTON: I mean, you won at the trial  
28 level, they appealed?

1 MR. BARNES: Yes, sir. They said they're filing  
2 an appeal. But they've also, just prior to me coming here to  
3 testify today, I received a generous amount of FAXes, telling me  
4 that, no, we're going to honor the judgment. And then the same  
5 day, I received a FAX saying, no, they are filing the appeal.

6 I'm not quite sure if one was to deceive me and  
7 deny me my presence here today. I won't attach a motive to  
8 anyone.

9 CHAIRMAN BURTON: I got it.

10 MR. BARNES: My point is that these sorts of  
11 things -- rule enforcement is cheap. In fact, it costs you zero  
12 dollars to enforce Your own rules. I fall under those rules.  
13 It costs us nothing.

14 It costs an exorbitant amount of money to try to  
15 manage our prisons through the court system.

16 However, my point of being here today is, if  
17 Mr. Terhune is insulated and cannot be reached when these sort  
18 of problems come up, I'm not talking about the fact that he may  
19 be an egregious person. He's probably a wonderful person. I  
20 don't know him as a person.

21 But under his current watch, these things have  
22 occurred. Not that it didn't occur prior to him.

23 CHAIRMAN BURTON: I understand, thank you.

24 MR. BRYANT: Senator, they're still occurring.

25 I filed two complaints alleging managerial  
26 misconduct. I notified every one in my chain of command,  
27 starting from the Associate Warden at my institution who deals  
28 with these matters, the Deputy Director of Institutions, the

1 Deputy Director of Operations, and Mr. Terhune's office himself.  
2 I have my memorandum to him with the recorded delivery by  
3 Federal Express.

4 To this date, four months later, I have yet to  
5 receive a response. So, it appears the atmosphere for  
6 managerial misconduct and insulation when these issues are  
7 brought to air is still present, and that they go unnoticed.

8 I stand here today to tell you, I will not be  
9 promoted past Correctional Lieutenant today because I have stood  
10 up and alleged managerial misconduct.

11 And to justify my concerns, I can show you a  
12 memorandum where everyone in this Department has avoided my  
13 issues, and I tend to believe these issues have been avoided  
14 because they're air-tight.

15 I have a well documented case of racial  
16 discrimination by a warden, an institution where black employees  
17 are not allowed to work in specific areas. And I've identified  
18 these issues to that entire chain of command. And to this date,  
19 I have not received a response. I have all that well  
20 documented.

21 But my point was, I had to go outside of my own  
22 department. I'm not asking for anyone in my department to  
23 arbitrarily just adopt my own position and my opinion.

24 What I am asking for is that the administrative  
25 process be available to me, like everyone else in my department.  
26 And that's not available to me today. I had to go outside of my  
27 department, the agency, YACA, to have someone simply assist them  
28 in white-washing my complaint.



1           And the memorandum from them basically told me  
2 that, yes, you do have a complaint. We know that it is logged.  
3 It will be answered on February 12. Today is the 11th; tomorrow  
4 is a holiday. So, what kind of response do you think I can  
5 expect on Thursday, the day after the holiday, especially to  
6 date there's been no investigator to contact me or ask me  
7 anything about this complaint.

8           CHAIRMAN BURTON: Senator Lewis.

9           SENATOR LEWIS: You may have answered the  
10 question. The question was going to be, what was the nature of  
11 the managerial misconduct you were alleging? Was it something  
12 other than racial discrimination?

13           MR. BRYANT: There's one complaint for racial  
14 discrimination and another complaint alleging violations of  
15 Government Code and the Peace Officer Bill of Rights.

16           SENATOR LEWIS: What was the nature of those  
17 violations?

18           MR. BRYANT: Basically writing negative comments  
19 on a peace officer's personnel records or records to be used for  
20 personnel purposes, and maintaining those records without my  
21 knowledge and actually using those records to make adverse  
22 decisions against me.

23           MR. BARNES: Senator Lewis, could I for just one  
24 second augment what Lieutenant Bryant said?

25           SENATOR BRULTE: I want to follow up first.

26           MR. BARNES: Yes, sir.

27           SENATOR BRULTE: It's against the law to have a  
28 personnel file?



1 MR. BRYANT: Yes, it's a violation of the  
2 Government Code.

3 CHAIRMAN BURTON: You're supposed to know what  
4 people put in your personnel file.

5 MR. BRYANT: And a peace officer has a right to  
6 know everything that exists in his personnel file, and you  
7 cannot make a negative comment about me in writing without me  
8 knowing about it.

9 SENATOR BRULTE: Walk me through that.

10 MR. BARNES: The legislative intent was to  
11 enhance good employer-employee relations.

12 SENATOR BRULTE: But walk me through that.

13 Whenever somebody puts something in your  
14 personnel file, that they have to notify you?

15 MR. BRYANT: Yes, for instance, if I was to do  
16 something wrong, and you were to choose to document that and it  
17 was negative in nature, you would be required to sit me down and  
18 show me what you intended to place in my personnel file.

19 CHAIRMAN BURTON: There's a chance, I guess, for  
20 rebuttal.

21 MR. BRYANT: For rebuttal, correct.

22 SENATOR BRULTE: You mentioned that because  
23 you've complained, you're sure you're not going to get promoted.

24 MR. BRYANT: I'm positive of that.

25 SENATOR BRULTE: Everybody that doesn't complain,  
26 they get promoted?

27 MR. BRYANT: Most of the time. And the people  
28 that assist them in shielding the managerial misconduct get

1 promoted.

2 Lieutenant Barnes is in possession of a court  
3 document, a transcript, an official transcript from his trial  
4 where the Associate Warden who was in charge of EEO  
5 investigations at Avenal State Prison, testified that racial  
6 discrimination is not an actionable offense, meaning it's okay.  
7 He was promoted to Chief Deputy Warden. That's how they reward  
8 managerial misconduct.

9 So, my request, our cases are similar but not the  
10 same. My request today is that you do not confirm Director  
11 Terhune. And if you do, that you request that he be held  
12 accountable for these types of things, and that he formulate  
13 some sort of report to you.

14 As an employee and as a tax-paying citizen, I  
15 think we're all entitled to answers. In a department this  
16 large, an unanswered complaint is unsatisfactory when they have  
17 people who can write.

18 CHAIRMAN BURTON: Senator Ayala.

19 SENATOR AYALA: I totally agree that you folks  
20 should receive due process.

21 I'm trying to, in my own mind, determine how much  
22 of the information you've given us refers to Mr. Terhune. All  
23 these problems occurred before he was appointed; was it not?

24 MR. BRYANT: We're not alleging these problems,  
25 or that he perpetrated these problems.

26 What I'm alleging is that he's aware has chosen  
27 to ignore these complaints.

28 SENATOR AYALA: Did it happen during his watch?

1 MR. BARNES: Sir, the majority, the lion's share  
2 of what I have here, I'm trying to point out, happened since  
3 August of 1997, if I understood when he said when he became the  
4 Director.

5 Mr. Terhune toured Avenal State Prison while the  
6 Warden and I were in a trial. We were both there. Why the  
7 Warden chose to be there every day, I don't know, while I was  
8 battling for my statutory rights.

9 Mr. Terhune never came to check and see why his  
10 Warden was at trial with one of his lieutenants.

11 You mentioned about being someone from the  
12 military. I was grunt for four years. I'm sure that you  
13 understand that, as a soldier, you are required to follow what's  
14 in place whether someone is there or not. And if you are  
15 leading a fire team, you are responsible for the least  
16 intelligent person as well as the most intelligent, within  
17 reason.

18 SENATOR AYALA: I know the chain of command  
19 stuff.

20 What I'd like to know is, now your case was  
21 settled in court; was it not?

22 MR. BARNES: Yes, sir.

23 SENATOR AYALA: I got a copy of a check for  
24 \$10,500 that you received.

25 MR. BARNES: Sir, I received a FAX -- if I could  
26 clarify that. I received a FAX last night.

27 That trial was concluded in October of 1997. I  
28 had a FAX from the Department's legal team that says a Notice of

1 Appeal, an officially documented Notice of Appeal, appealing the  
2 judgment, declared under the penalty of perjury. I received a  
3 FAX last night.

4 I have never received a check for the payment,  
5 for the judgment.

6 You cannot appeal the judgment and pay the  
7 judgment at the same time.

8 SENATOR AYALA: This is dated the 10th of  
9 February of '98. It's a FAX of the check that's mailed out to  
10 you and to Adam Fairbairn.

11 I mean, I understand that the investigation was  
12 going about the same time as your trial, prior to the trial.  
13 Then, when the trial started, they ceased the internal  
14 investigation. They're picking it up now to see if any problems  
15 exist, and I'm all for that.

16 I don't support what you just mentioned happened  
17 to you. But I don't understand why you should hold this  
18 gentleman accountable for something that didn't happen on his  
19 watch?

20 MR. BARNES: Mr. Ayala, I think part of what  
21 you're articulating is that, see, an agency's like a  
22 corporation. When something goes well, everyone did it well.  
23 When something goes wrong, no one's responsible.

24 CHAIRMAN BURTON: If I could, is your complaint  
25 not that he's responsible for the bad things that happened, but  
26 he did not respond to complaints made about the bad things that  
27 happened?

28 MR. BARNES: Yes, sir. My complaint is not that



1 he is responsible, and I apologize if I was not clear.

2 CHAIRMAN BURTON: That he is now the man, and  
3 when you complained up the chain of command, that he was there  
4 and you didn't get a response from him.

5 MR. BARNES: Sure. You can't get him on the  
6 phone; you can't get him through mail. I can't transport myself  
7 into --

8 MR. BRYANT: Anyone or his subordinates.

9 SENATOR LEWIS: I'm not sure that we can resolve  
10 these questions right now and vote on this. Maybe it would be  
11 worthwhile to put this over for a week. Give the two parties a  
12 chance to communicate and make sure they're talking to each  
13 other.

14 CHAIRMAN BURTON: For vote only?

15 SENATOR LEWIS: Yes.

16 CHAIRMAN BURTON: Fine with me.

17 Senator Lewis suggested to put it over a week for  
18 vote only just so that Mr. Terhune and these people, and because  
19 our Republican colleagues have to leave fairly shortly.

20 Are you familiar with anything that we're talking  
21 about here?

22 MR. TERHUNE: Yes, I am familiar with it.

23 SENATOR AYALA: Mr. Chairman, if we're just going  
24 to put it over for a vote only, shouldn't we hear from  
25 Mr. Terhune now?

26 CHAIRMAN BURTON: Yes, exactly.

27 Would you comment on the complaints of -- thank  
28 you, gentlemen -- the lack of response? And not their

1 complaints, not the validity, but the fact that nobody seems to  
2 have responded to them.

3 I do think, Lieutenant Barnes, that the appeal  
4 doesn't have to do with your award. It has to do with the  
5 attorney's fees. So, in other words, you've gotten your  
6 damages so to speak, and the appeal, as I understand it, is on  
7 the issue of the fees for your attorney. So that's what the  
8 appeal would be.

9 MR. BARNES: Sir, I know you want to get to  
10 Mr. Terhune, but that case was not financed on a contingency  
11 basis. I financed that lawsuit because there was no other way.

12 CHAIRMAN BURTON: But that's not up to us.

13 MR. BARNES: And I only wanted to comment having  
14 to go to court is not why I'm here.

15 I'm here that it cost the taxpayers far too much  
16 money to use the court than our own administrative process.

17 CHAIRMAN BURTON: Exactly.

18 Mr. Terhune, could you respond?

19 MR. TERHUNE: There is no way in this world that  
20 I can convince Lieutenant Barnes that it was Friday, about 3:00  
21 o'clock, when I talked with attorneys. We were talking. And  
22 finally I heard it all and I said, pay Lieutenant Barnes his  
23 \$10,500.

24 It was Saturday that the letter, you had sent the  
25 letter. It was Friday I said, look, pay Lieutenant Barnes the  
26 money that we owe him as part of the judgment.

27 The issue about lawyer's fees, attorney's fees,  
28 is another issue and to step there --

1 CHAIRMAN BURTON: The issue here seems to me, and  
2 I may be wrong, and I don't want to rehash this whole thing at a  
3 future time, but it wasn't just like one letter that was got.

4 There seems to have been series of complaints  
5 sent up the line about whatever, mismanagement, malfeasance,  
6 where there's been no response back.

7 Now, I don't know whether it would be, if he  
8 talks to an Assistant Warden, is it that person's duty to tell  
9 the Warden? Can somebody shortstop it before it gets to you?

10 I think that's what the complaint is. It seems  
11 to be his only complaint against you, I believe, or at least as  
12 I heard it, was that he complained about things that he thought  
13 were real, and it seems to me more real about the operation of  
14 the institution than himself, and never got a response from  
15 anybody.

16 So, that because you're the top banana, that  
17 you're the one --

18 MR. TERHUNE: No, we did have some people that  
19 were talking with him.

20 I guess if there's anything that I would have  
21 probably done different, I should have talked with him.

22 CHAIRMAN BURTON: Well also, such a paper trail  
23 that we wouldn't even have the discussion.

24 SENATOR HUGHES: Mr. Burton, I just want to ask a  
25 technical question.

26 When is his drop-dead date for the appointment?  
27 Is it within a week?

28 MS. MICHEL: August 20.

1                   SENATOR HUGHES: So, I think that we should put  
2 it over for more than a week because they may not get a chance  
3 to talk to each other and to iron the things out.

4                   I don't know, all of this time this thing has  
5 been festering. I don't know that we're going to resolve it in  
6 a week. And it concerns me because I want to know how to vote  
7 because I want to hear the results of their negotiation. I want  
8 to know about the untimeliness of appealing this at the 11th  
9 hour when a financial settlement was almost made.

10                  You know, it puts me in a great dilemma, because  
11 we're affecting more than one life. We're affecting several  
12 lives. We're affecting these people, three individuals'  
13 careers, and I don't know how many other individuals, the three  
14 that have appeared before us today.

15                  So, I would say that I don't know in a week that  
16 I can vote.

17                  CHAIRMAN BURTON: If I could make a suggestion,  
18 and I think to me the issue, and Lieutenant, let me tell you,  
19 bureaucracies fight and appeal every dollar that they've got to  
20 pay out. Trust me, they are not singling you out on this. I  
21 mean, you may be singled out on a host of things, that's just  
22 typical bureaucratic mentality. Don't pay a dime. Let's spend  
23 \$100 million to save a \$10,000 check that says we made a  
24 mistake.

25                  So, the issue, I believe, and you sort of  
26 admitted, maybe, I think this could be resolved in a week, is  
27 that it's something that if it was dealt with, and you weren't  
28 even there at the beginning, but these seem to be that they had



1 some serious complaints that should have been dealt, with either  
2 like yeah, you're right, or that's the dumbest thing I've ever  
3 heard in my life, so to speak.

4 As you said, maybe you should have talked to him,  
5 and that 20-minute conversation could have saved some time.

6 But, I'd like to know what's wrong with the  
7 system if somebody who's got three hashmarks -- which, you know,  
8 in World War Two, I knew what that meant. That meant, depending  
9 on the service, either nine or twelve years service -- that made  
10 a complaint, and it doesn't go up the line for any kind of, not  
11 action, but response. I think that's the concern that Senator  
12 Hughes has.

13 SENATOR AYALA: Mr. Chairman, I think that it is  
14 a serious problem we have here. But why should it take more  
15 than a week? We settle national disputes in a few days.

16 I want this to appear on our next agenda so we  
17 can get this over with.

18 Why do you want to drag it?

19 CHAIRMAN BURTON: That was Senator Hughes'  
20 suggestion.

21 SENATOR AYALA: But he's arguing the point that  
22 we need more time. Why do you need more than a week?

23 CHAIRMAN BURTON: Senator Hughes did that,  
24 Senator Ayala.

25 SENATOR AYALA: I understand that, but why do you  
26 need more than a week?

27 SENATOR HUGHES: He didn't do it. I said I  
28 needed more time.

1                   SENATOR AYALA: I'm not arguing that point. I  
2 don't agree with you, is what I'm saying.

3                   MR. BARNES: Shall I try to answer him?

4                   CHAIRMAN BURTON: No.

5                   I tell you what we're going to do. We're going  
6 to put this over for one week. The staffs can check early on,  
7 but I think you're not going to solve the problems that racism  
8 exists in the institution or anywhere in a week, in a month, or  
9 whatever.

10                  You can solve the problems of the lack of  
11 communication and responsibility in your chain of command and  
12 get some commitments on that.

13                  Mr. Terhune cannot undo whatever has been done.  
14 He can see that whatever was not done before is done, so we will  
15 put this over for a week. And, you know, to the satisfaction of  
16 the majority of the Members of the Committee, if they aren't  
17 satisfied with what comes up, there's always the possibility of  
18 doing that.

19                  But I agree with Senator Ayala to some point,  
20 that you've had more communication in last threes minute than  
21 you had in the last six months.

22                  So, we will put the matter over. I think it  
23 would behoove you to find out that somebody not bucked something  
24 up the line because they were covering their rear. Or, did it  
25 get it bucked up and you saw it, but you were too busy? Or, by  
26 the time you found out about it and you said, what's this? And  
27 someone says, ah, it's nothing.

28                  But get together and do that. So, this will be

1 over until the next meeting.

2 MR. BARNES: Yes, sir.

3 CHAIRMAN BURTON: Get together and chat like.

4 Roberto Vellanoweth, member of the Youthful  
5 Offender Parole Board. We have the professional and academic  
6 background.

7 Do you want to give us either your overview about  
8 what's been going on there, or what should change.

9 I remember during budget hearings and other  
10 things that Senator Vasconcellos and others had great trouble  
11 with the Youthful Offender Parole Board. For the life of me, I  
12 can't remember, but I think what it was is that nobody ever went  
13 out anywhere. It was a record that would have made New York  
14 blush.

15 But why don't you just quickly give us your  
16 thoughts of what's been happening, and maybe what changes you'd  
17 like to see. Leave the cost out for a minute, and just the  
18 appropriate changes.

19 MR. VELLANOWETH: Senator Burton, congratulations  
20 on your appointment.

21 My name is Roberto Vellanoweth. I'm a member of  
22 the Youthful Offender Parole Board.

23 Committee Members, ladies and gentlemen, I'm here  
24 before you again. I was here two-and-a-half years ago before  
25 you for my confirmation for the term that I was finishing for a  
26 previous Board member. This is actually my first full term  
27 nomination, and hopefully, my confirmation from the Senate for  
28 this Youthful Offender Parole Board.

1                   Your question regarding the comments by Senator  
2 Vasconcellos, I was not a part of that, and I think that you're  
3 probably referring to the Youth Authority in terms of the  
4 concerns that were raised with Youth Authority but not the  
5 Youthful Offender Parole Board.

6                   CHAIRMAN BURTON: I thought it was you. You  
7 could be righter than I am, so no problem.

8                   MR. VELLANOWETH: My background, my education, my  
9 experience, I think, stems from coming from Mexico at a very  
10 young age, and having learned to survive in the barrios of  
11 Sacramento, I come here before you.

12                   I have my whole family. I think they're here in  
13 support. My wife, Cristina, my mother, Rosemary.

14                   MR. VELLANOWETH: Senator Jim Nielsen's also here  
15 in support. Thank you of being here, Senator.

16                   All the people I think that you see here, most of  
17 them are here in my support. I don't think I have any  
18 opposition.

19                   But I think the most important thing that you  
20 ought to learn or to know about me is the fact that when we make  
21 decisions in the Youthful Offender Parole Board, all my  
22 colleagues, when we make a decision, we take each individual  
23 case individually, because there's a lot of facts that we have  
24 to absorb very rapidly when you have 22 cases that you have to  
25 go through. Obviously, in my tenure, I've probably seen over  
26 10,000 cases since I've been there.

27                   Each case, you have to have compassion. You have  
28 to have also the understanding of the victims and what has



1 happened to those victims. And hopefully, we have an inner gut  
2 feeling about that individual ward, whether or not they're going  
3 to be ready for a parole consideration, which, in my opinion,  
4 that's the most important decision we make.

5 CHAIRMAN BURTON: This is a question, and it's a  
6 tough one.

7 You have a victim -- probably be more victim than  
8 the families of victims, or either way -- and you look at the  
9 ward. And what ever it is that the ward did, you look at that  
10 ward. You look at the background. You look at something, and  
11 you would just say that this person, you know, deserves a shot.

12 And by and large, except in rare occasions either  
13 the victims, or the family of the victims, really, I think than  
14 the victims, but they will say don't do this because, and then  
15 it will get revisited, the situation that brought the ward  
16 there.

17 MR. VELLANOWETH: That happens.

18 CHAIRMAN BURTON: And that's like a more  
19 determining factor as opposed to the fact that this person, if  
20 no victim showed up, the crime's the same, the facts are the  
21 same, but a victim shows up, the odds are the individual  
22 probably doesn't get let out. And if no victim shows up, you  
23 know, it increases the chance.

24 MR. VELLANOWETH: I understand what you're, I  
25 think, trying to convey.

26 CHAIRMAN BURTON: It's a question. I have no  
27 other conveyance.

28 MR. VELLANOWETH: The impact of the victim, of

1 course, or the parents, or the family of a victim, and  
2 especially when they bring and they revisit the case obviously  
3 has some impact on the Board members, because when you see a  
4 gruesome crime, a murder scene, and the victims bring that back  
5 to the forum --

6 CHAIRMAN BURTON: Wouldn't that be in the file?

7 MR. VELLANOWETH: It's typically, typically not  
8 in the file.

9 CHAIRMAN BURTON: The file that you have on Ward  
10 A doesn't say, went into somebody's home, slashed three people  
11 with a knife and cut the wedding ring off the finger?

12 MR. VELLANOWETH: Absolutely. That is in the  
13 file.

14 CHAIRMAN BURTON: What isn't in it?

15 MR. VELLANOWETH: What I was talking about is,  
16 when you see a video tape that a victim brings and that shows  
17 what happened in the scene, that's not in the file.

18 The actual crime is definitely in the file, and  
19 it's very well documented in that file.

20 CHAIRMAN BURTON: It would seem to me that the  
21 crime more or less speaks for itself. I don't know, I mean,  
22 who's present to video tape a crime?

23 MR. VELLANOWETH: Actually, the video tape that I  
24 saw in the last few years was the video tape of the newscasters  
25 actually photographing the scene, showing the victims.

26 CHAIRMAN BURTON: Showing the crime scene?

27 MR. VELLANOWETH: Showing the crime scene and the  
28 actual victim, because they were still there.

1                   So, those were brought to one of our hearings,  
2 and it does have an impact. You asked me whether or not it had  
3 an impact.

4                   CHAIRMAN BURTON: No, I know it does. I know it  
5 has an impact, which is the thing of it.

6                   I don't know how somebody, whenever you have a  
7 family or victim there who's, like, bringing this up could ever  
8 do -- anyway, I have one question. Susan Wallace said you're  
9 okay, although I never listen to her anyway. I thought she  
10 retired.

11                  The counties have to pay a piece of keeping  
12 certain people when they send them to the Youth Authority;  
13 right?

14                  MR. VELLANOWETH: Yes.

15                  CHAIRMAN BURTON: Should they have a say in the  
16 length of stay, or once they decide to lateral them off to you,  
17 then they forfeit that right?

18                  MR. VELLANOWETH: What happens normally, the  
19 county, the judge has a sentence, a certain time frame.  
20 Sometimes they give a murderer life, and unfortunately, as you  
21 know, youthful offenders are basically have a jurisdiction until  
22 they're 25.

23                  CHAIRMAN BURTON: Let's not talk about murderers.  
24 Let's talk about --

25                  MR. VELLANOWETH: Car thieves.

26                  CHAIRMAN BURTON: Well, semi-normal people.  
27 Whenever we talk about anything, we bring up the axe murderers.  
28 I mean, there's too many of them, but they really aren't that

1 big a percentage.

2 MR. VELLANOWETH: Well, we can talk about petty  
3 theft, and a number of petty thefts where they've got Category  
4 Seven offenders. That's the lowest category.

5 Then what happens is, we look at all of the facts  
6 what the jurisdictions are that we have. Sometimes we're  
7 limited by the time that the judge gives them.

8 CHAIRMAN BURTON: The question was like, should  
9 the counties have greater say in the length of time, do you  
10 think?

11 MR. VELLANOWETH: Financially, economically,  
12 obviously they have an impact. The crime determines the time.  
13 So, they have a say when the county actually gives us the ward.  
14 They already have established the time.

15 CHAIRMAN BURTON: Well, the judge.

16 MR. VELLANOWETH: The judge in that county.

17 CHAIRMAN BURTON: The judge for the State of  
18 California. No, a juvie judge is probably not a judge for the  
19 state -- yes, it's still a judge for the State of California, in  
20 and for the City and County of San Francisco. So, it's State's  
21 giving you the time.

22 Questions of Members of the Committee?

23 SENATOR HUGHES: Just a quick one.

24 We have new and experimental programs, such as  
25 Mother Infant Care Program and Young Men as Fathers.

26 Do you think these programs are making any  
27 difference, or are they just an unnecessary add-on?

28 MR. VELLANOWETH: My opinion on those programs is



1 two-fold.

2 First, Young men as Fathers gives the wards  
3 additional tools to function back in society. These tools have  
4 never -- in a lot of occasions, they have not been afforded to  
5 them in their own home. Most of these wards come from  
6 one-parent families, and typically it's a mother that is in that  
7 home. A lot of times these mothers are also drug addicts or  
8 have been in prison, and they come from very dysfunctional types  
9 of environments.

10 What happens is, if we don't offer these young  
11 men and women the opportunity to learn what it means to be a  
12 parent, then obviously we are remiss, and our whole purpose is  
13 to rehabilitate. That's what the Youthful Offender Parole Board  
14 looks at, whether or not they've been rehabilitated and to what  
15 extent.

16 So, I do believe that, in answer to your  
17 question, Senator Hughes, that we definitely need to invest  
18 those dollars in those rehabilitative programs.

19 SENATOR HUGHES: One last question.

20 When a ward comes before the Board for parole  
21 consideration, how does the Board assess whether they, he or  
22 she, has been rehabilitated or is no longer a threat to the  
23 public?

24 MR. VELLANOWETH: The Board really does not make  
25 that assumption. It's made by the Youth Authority.

26 They bring to the Board a recommendation based on  
27 all of the programs that are given to that ward by the Youthful  
28 Offender Parole Board in their initial hearings and subsequent

1 hearings, because it is a lengthy process to get a young ward  
2 ready for parole.

3           Once they have completed all those programs, the  
4 Youthful Offender Parole Board member or members, depending on  
5 whether it's a panel or a full board, or a full board en banc  
6 type of hearing, determines whether that individual at that  
7 particular point in time is still a danger to society. And that  
8 determination is made for a number of factors: their  
9 performance within the Youth Authority; the number of  
10 disciplinary hearings that they've had; and whether or not they  
11 really behaved during their tenure there.

12           Then we make a determination to give them an  
13 opportunity on the parole phase of the program. That's just one  
14 facet.

15           SENATOR HUGHES: Mr. President, I have no further  
16 questions.

17           CHAIRMAN BURTON: Thank you.

18           Any further questions from Members of the  
19 Committee? Senator Ayala.

20           SENATOR AYALA: One question.

21           We have these youthful offenders at YTS up till  
22 they're 25 years old?

23           MR. VELLANOWETH: It's 21-25 by statute.

24           SENATOR AYALA: I cannot understand people who  
25 are over 21, 22 in a Youth Authority.

26           You know, when we were 21, 22, 23, we were out  
27 there.

28           MR. VELLANOWETH: We were men.

1           SENATOR AYALA: We didn't have to be with the  
2 young people any more.

3           It seems to me these people may be corrupting the  
4 younger element. You know, the bad apple in the basket there.

5           Would you recommend, or have any idea whether we  
6 should lower that age level so that people that are committing  
7 vicious crimes, youthful offenders, go to prison not to the  
8 Authority?

9           MR. VELLANOWETH: Senator Ayala, there are in the  
10 Youth Authority institutions, different institutions for  
11 different ages. For example, at O.H. Close, we have the very,  
12 very young wards that are unsophisticated, and they go to that  
13 particular institution.

14           The ones that are older and more sophisticated  
15 and criminally minded, more so than theses young youth, are sent  
16 to a high level of security type institution, like YTS, for  
17 example, as you mentioned before, or in Sacramento we have NRCC,  
18 which is the entry point, but those are very typical low level  
19 criminals. And then at Chaderjian School, that's where the real  
20 heavy-duty type of criminal go, and they're the ones that are  
21 older.

22           SENATOR AYALA: Who makes the determination  
23 whether they go to Youth Authority or a men's prison? Who makes  
24 that determination when they're over 21?

25           MR. VELLANOWETH: The judge makes it, unless  
26 they're unamenable for treatment, then the recommendation is  
27 made by the Youth Authority to send them to prison.

28           SENATOR AYALA: You have the case in the Chino

1 YTS where that so-called youthful offender murdered that  
2 officer.

3 MR. VELLANOWETH: Correct.

4 SENATOR AYALA: And that individual was 23, 24,  
5 25. They should have kicked his you-know-what up to the prison a  
6 long time ago before that.

7 MR. VELLANOWETH: I concur with you.

8 CHAIRMAN BURTON: What is the pleasure of the  
9 Committee?

10 SENATOR AYALA: Move the confirmation.

11 CHAIRMAN BURTON: Moved by Senator Ayala. Call  
12 the roll.

13 SECRETARY WEBB: Senator Ayala.

14 SENATOR AYALA: Aye.

15 SECRETARY WEBB: Ayala Aye. Senator Brulte.

16 SENATOR BRULTE: Aye.

17 SECRETARY WEBB: Brulte Aye. Senator Hughes.

18 SENATOR HUGHES: Aye.

19 SECRETARY WEBB: Hughes Aye. Senator Lewis.

20 SENATOR LEWIS: Aye.

21 SECRETARY WEBB: Lewis Aye. Senator Burton.

22 CHAIRMAN BURTON: Aye.

23 SECRETARY WEBB: Burton Aye. Five to zero.

24 MR. VELLANOWETH: Senator Burton, just one  
25 comment, if I may.

26 I had a couple of speakers who wanted to come  
27 before you.

28 CHAIRMAN BURTON: Have them identify themselves.



1 We didn't want to lose a quorum and have to come back.

2 MR. VELLANOWETH: Thank you for the confirmation,  
3 Senator.

4 Mario Obledo, President of the California  
5 Coalition of Hispanic Organizations.

6 CHAIRMAN BURTON: Mario, how are you?

7 MR. OBLEDO: Fine, thank you.

8 Mr. Chairman and Members of the Committee --

9 SENATOR HUGHES: Mr. Obledo, had he known it was  
10 you, he would have come over and kissed you, too.

11 CHAIRMAN BURTON: Congratulations on your great  
12 award.

13 MR. OBLEDO: Thank you very much, Senator.

14 Mr. Chairman, Members of the Committee, my name  
15 is Mario Obledo, President of the California Coalition of  
16 Hispanic Organizations.

17 We are here to endorse Mr. Roberto Vellanoweth  
18 for reappointment to the Youthful Offender Parole Board. He is  
19 a fair person. He is a person of integrity and a dedicated  
20 public servant.

21 If I may speak on behalf of Bill Garcia, who's  
22 the Legislative Advocate the American GI Forum, a  
23 Mexican-American veterans' organization, he had to leave, but he  
24 asked me to inform the Committee of their endorsement as well.

25 If I can be so presumption, I think  
26 Mr. Vellanoweth would have the full support of the entire  
27 Hispanic community in the State of California.

28 Thank you.

1 CHAIRMAN BURTON: Had we known you were a  
2 supporter, we could have had a shorter question period.

3 MR. WILHOIT: Mr. Chairman, my name is Doug  
4 Wilhoit, W-i-l-h-o-i-t. I'm Vice Chairman of YOPB, and I bring  
5 you greetings from our Chairman, Senator Robert Presley, who's  
6 in Southern California doing hearings right now.

7 The only reason I'm right now is to speak on  
8 behalf of Roberto. He promised me dinner if I'd be here, so I  
9 have to earn my dinner tonight.

10 CHAIRMAN BURTON: Presley didn't promise you  
11 dinner.

12 MR. WILHOIT: A bottle of wine, no.

13 Very briefly, I think that the vote's already  
14 been taken, and I'm very pleased to see that Roberto has the  
15 support of this body.

16 I've had 31 years of experience in government, 12  
17 years as a police officer, 16 as a county supervisor. We had a  
18 lot of discussions during the budget years ago. And then the  
19 last two-and-a-half years on the Board.

20 I can say not only have I gained a professional  
21 colleague, but a very dear friend. Roberto does a fine job and  
22 adds a great deal.

23 The Board would like to have him there for  
24 another four years.

25 CHAIRMAN BURTON: You have very fine people  
26 vouching for you.

27 MR. VELLANOWETH: Thank you, Senator. Thank you  
28 all, and I appreciate your support.

1 CHAIRMAN BURTON: Congratulations to your  
2 Chairman.

3 MR. VELLANOWETH: Thank you.

4 [Thereupon. This portion of the  
5 Senate Rules Committee hearing was  
6 terminated at approximately 4:15 P.M.]

7 --ooOoo--  
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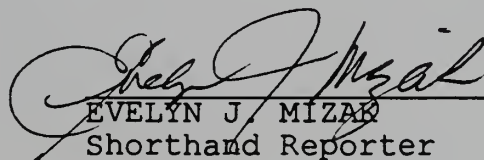
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I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 18<sup>th</sup> day of February, 1998.

  
EVELYN J. MIZAK  
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